

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 08-E-1171 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Othoni Realty of the Informal Decision Rendered in Favor of Ms. Michelle Rojas and Consolidated Edison Company of New York, Inc. (802205)

COMMISSION DETERMINATION
(Issued and Effective October 22, 2012)

COMPLAINT: Shared Meter
DISPUTED AMOUNT: \$2410.46
PERIOD INVOLVED: From August 5, 2005 to August 9, 2007

SUMMARY

Othoni Realty (the owner) first contacted the Office of Consumer Services (OCS) in January 2008 concerning shared area charges and an assessment it was billed by Consolidated Edison Company of New York, Inc. (Con Edison or the utility).¹ By letter dated September 15, 2008, the owner appeals a September 5, 2008 informal hearing decision, which sustained the existence of an electric shared meter² condition in complainant's multiple family dwelling in Queens, New York. The owner asserts that the meter in question only supplied Michelle Rojas' (the tenant's) dwelling. For the reasons discussed below, we uphold

¹ Ms. Mary Katechis has represented the owner throughout the complaint.

² A shared meter condition exists under PSL §52 if a tenant is billed by a utility for gas or electric service provided to areas outside the tenant's dwelling. As defined by PSL §52(1)(c), a tenant's dwelling means "any building or structure or portion thereof which is occupied in whole or part as the home, residence or sleeping place of one or more human being" and includes "any equipment located outside such building or structure or portion thereof which is under the exclusive use and control of the occupant . . ."

the informal hearing decision that a shared meter condition existed at the owner's building, but grant the owner's alternative request for reduction of the 12-month assessment.

DISCUSSION

Utility records list six apartments for the address in question.³ Ms. Rojas was the tenant and the utility's customer for the apartment identified as the "1RR" apartment from August 6, 2005, to April 1, 2008. As a result of a high bill complaint from the tenant, the utility inspected the tenant's electric meter on August 9, 2007. The report of the inspection states that the electric meter was found supplying service to an air conditioner and stereo of a basement apartment and an unknown load. The report noted that the shared meter load observed at the time of the inspection was 1,296 watts.

Pursuant to PSL §52, when a shared meter condition, involving more than minimal shared use, is found affecting the meter of a residential dwelling, the building owner is generally responsible for both shared area charges, representing the estimated cost of service used outside the tenant's apartment,⁴ and a 12-month assessment, representing the estimated cost of all service provided through the shared meter for a 12-month period.⁵ By letter dated September 7, 2007, the utility informed the owner that a shared meter condition was found and that 120 days later it would be billed for shared area charges and a 12-month assessment, and, if the condition was not corrected, the account would be placed in the realty's name and

³ Utility records identify the six apartments in the building, two on each floor of the three-floor building.

⁴ See PSL §52(5)(b) and (c).

⁵ See PSL §52(5)(d).

it would be billed for all electric usage from that point on. The owner was billed a shared area charge of \$1,062.55 for the period of August 5, 2005, to August 9, 2007, and a 12-month assessment of \$1,347.91. The shared area charge was based on the utility's shared usage estimate of 213 kilowatthours (kWh) per month.⁶

By letter dated January 27, 2008, faxed to OCS, the owner disputed the utility's determination that a shared meter condition existed. Staff upheld the utility's shared meter billing. The owner continued to dispute the billing and in a fax dated April 7, 2008, the owner asserted that its electrician, ARCO Electrical Construction Corp., performed an inspection and did not find a shared meter condition.⁷ An informal hearing was then scheduled for August 28, 2008. The owner, however, failed to appear at the scheduled time of the informal hearing, and therefore the informal hearing officer, received information from the attending party (the utility) and subsequently issued an informal hearing based on review of the

⁶ Based on a survey of Ms. Rojas' appliances, the utility estimated that the tenant would consume 251 kWh of electricity per month. Since the tenant's meter recorded an average of 464 kWh per month, the utility used the 213 kWh difference between the average monthly consumption recorded by that meter during the shared meter period and its estimate of the tenant's consumption as the basis for the shared meter billing.

⁷ The electrician's letter dated November 2, 2007, stated in relevant part "After responding to a call in order to check the PLP meter and panel, and apartment 1-R panel we found there was no connection or shared power between the two panels. Everything appears normal and in good working condition. The panels were shut down one at a time and no movement was found in the meter. There does not appear to be any reason for further investigation of possible electrical problems."

complaint file.⁸ The tenant was invited to the informal hearing but did not attend. The tenant instead submitted a written position stating that she discovered her meter was shared by observing her meter continued to advance, after she unplugged all of her electric appliances. She also stated that on one occasion another apartment in the building lost electricity at the same time she lost service to half of her apartment, which also indicted that the electric service was shared. The tenant asserted that she informed the owner of the electric service problem, but the owner ignored her. Based on the utility's August 9, 2007 inspection report and a review of the tenant's consumption, which showed a considerable decrease after August 28, 2007, the hearing officer concluded that a shared meter condition existed and the shared meter billing was upheld.⁹

On appeal, the owner again disputes the utility's finding that a shared meter condition ever existed at its building and asserts, in the alternative, that should the Commission determine a shared meter condition did exist, the utility should not be permitted to penalize complainant with a 12-month assessment. The owner also disputes the tenant's allegation that the tenant previously informed the owner of an electric service problem in the building. We have no reason to believe that the utility's August 9, 2007 inspection, which was performed during the normal course of the utility's business,

⁸ Ms. Katechis advised staff of the informal hearing unit, nearly two hours after the scheduled start of the informal hearing, that her husband unexpectedly could not attend the hearing.

⁹ The hearing officer determined that during the period of October 26, 2006, to March 30, 2007, the tenant's meter recorded a daily average consumption of 12.4 kWh. During a similar period the following year October 26, 2007, to March 31, 2008, the meter recorded a daily average of 5.6 kWh per day.

was improperly conducted or that the shared meter finding was erroneous. With all of the tenant's appliances either turned off or disconnected, the tenant's meter continued to record electric usage, indicating that the tenant's meter was supplying service to an area outside of the tenant's apartment. The decrease in recorded consumption on the tenant's meter after the shared meter period also supports a finding that the tenant's meter was indeed supplying shared service.¹⁰

With regard to the assessment, PSL §52(5)(d) empowers us to reduce a 12-month assessment by a maximum of 75 percent. This same provision mandates that in deciding whether and how much to reduce the assessment, the commission or its designee shall consider the total amount of the . . . [full 12-month assessment] in relation to the shared area charges over such twelve month period and any other equitable factors established by the commission. In this case, utility records support annual shared area charges of approximately \$531.28. The shared area charges therefore are 39% of the full 12-month assessment for which the owner has been billed. Reduction of the assessment imposed on Othoni Realty to \$525.68, which is 39% of the original assessment amount, is proper.

DETERMINATION

To assure that all aspects of this case have been properly addressed, the complaint file has been thoroughly reviewed. We determine that the tenant's electric meter provided service to areas outside the tenant's dwelling for which the tenant did not have exclusive use and control and that billing of the owner for shared area charges and a 12-month

¹⁰ See note 9, Supra.

shared meter assessment was proper. The utility is directed, within 30 days of the date this determination is issued, to reduce the debit to the owner's account for the 12-month assessment for the shared electric meter to 39% of the original amount (i.e. \$525.68) and inform the Director of the Office of Consumer Services, in writing, that it has done so. Therefore, the owner's appeal is denied in part and granted in part.