



RECEIVED  
PUBLIC SERVICE  
COMMISSION  
EXECUTIVE OFFICE - ALBANY

NOV 14 AM 11: 23

December 23, 2010

Jaclyn A. Brillling, Secretary  
Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

**RE: Case #916797 Salisbury Point Cooperative  
2 Piermont Avenue  
Nyack, NY**

Dear Ms. Brillling,

As the managing agent for Salisbury Point Cooperative, we here by appeal the decision issued by Mr. John P. Thompson on December 20, 2010.

The reasons for our appeal are as follows:

1. We believe the hearing officer did not consider all of the facts of the case, in that information provided to him during the informal hearing was not considered, nor is it reflected in his decision.
2. Information was provided subsequent to the hearing to both the hearing officer and the utility company which was not considered in rendering the decision.
3. New facts and evidence, which were not available at the time of the hearing, further supports the cooperative's claim that the notification system used by the utility company is deficient.

To elaborate further, after the informal hearing, but prior to a decision being rendered by Mr. Thompson, the utility company (O & R) used their notification system on November 17, 2010. On that day, I received a "missed call" on my cell phone, and no voicemail.

Mark Miller, the building's superintendent also had a missed call on his cell phone. His office phone had a message which consisted of the end of a recorded message. There was enough of a message for Mr. Miller to figure out that O & R had called, so he called Dan Rodgers at O & R and Mr. Rodgers advised Mr. Miller that an interruption message had been sent earlier that morning.

I contacted Mr. Thompson the same day via a telephone call, and followed up with a letter, copy

42 RIVER STREET, 2nd FLOOR, SLEEPY HOLLOW, NEW YORK 10591

TEL: (914) 524-8600

FAX: (914) 524-9100

WWW.BLUEWOODSMGMT.COM

attached. I explained to Mr. Thompson that I believed that the O & R recording started as soon as the phone being called was "answered" even if a recording was being played first on the phone. The O & R recording does not wait for the called phone to "beep", so either no message or only a partial message is left.

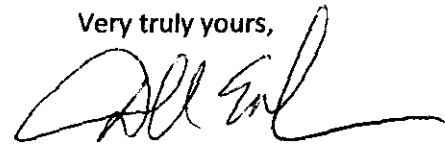
We also notified O & R of this problem. They initially said it was a problem with our "telephonic equipment", meaning, my personal cell phone, the superintendent's personal cell phone, and the hard wired phone in the superintendent's office. Please see the attached correspondence related to this incident. O & R conducted a test at Salisbury Point on Thursday December 9, 2010 at 8:30am. I was present, as was Mark Miller and O & R's representative, Jacqueline Bubenko. Mr. Rodgers called all of the above mentioned phones, which we purposely did not answer. No messages were received or recorded.

Lastly, the phone number that is left on O & R's message to call is a non working number. It just rings indefinitely, with no message or instructions given to assist anyone who calls it.

I respectfully request that a formal, in person hearing be conducted to resolve this matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Donald E. Wilson

DEW:sr

Cc: Ms. Andrea Reeves  
Orange & Rockland Utilities Inc.  
390 West Route 59  
Spring Valley, N.Y. 10977

Cc: Board of Directors

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
90 CHURCH STREET, NEW YORK, NY 10007-2919  
www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN  
*Chairman*  
PATRICIA L. ACAMPORA  
MAUREEN F. HARRIS  
ROBERT E. CURRY JR.  
JAMES L. LAROCCA  
*Commissioners*



PETER McGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

December 20, 2010

Mr. Don Wilson  
Bluewoods Management Group  
42 River Street, 2<sup>nd</sup> Floor  
Tarrytown, NY 10591

Ms. Andrea Reeves  
Orange and Rockland Utilities, Inc.  
390 West Route 59  
Spring Valley, NY 10977

**Subject:** Informal Hearing Decision  
Case #916797 – Salisbury Point Cooperative  
2 Piermont Avenue  
Nyack, New York

Dear Mr. Wilson and Ms. Reeves:

An informal hearing concerning the above case was held on November 4, 2010 via telephone conference. Mr. Don Wilson (the complainant) of Bluewoods Management represented the customer (Salisbury Point Cooperative) and Mr. Mark Miller (building superintendent) participated in the hearing. Ms. Jane Quinn, Mr. Dan Rogers and Mr. John Carley represented the company, Orange and Rockland Utilities (O&R). Based on all the information presented, I am sustaining the charges for unauthorized use of interruptible gas service on the complainant's accounts.

**Complainant's Position**

On June 23, 2009, Mr. John P. Schutz wrote to the Office of Consumer Services (OCS) stating that Bluewoods Management is the management company for the customer which is a 121 unit cooperative community which can be switched from gas to oil when requested by the company (O&R). In exchange, the community is charged less for delivery. In March 2009, a switchover was called to the superintendent of the building at night requesting a switch to oil. The message was a computerized message which was very unclear, arriving on a Monday evening and stating a switchover should occur at midnight, Tuesday. The superintendent received the message and set up a

Finally, when the issue of the penalty assessment commencement time being changed from 12:00 midnight to 2:00 AM was discussed, the customer indicated he had no knowledge that it had been changed.

### **Company's Position**

The company's October 21, 2009 response to our request for information states that on the evening of March 2, 2009, the company's Voice Response Unit (VRU) made outbound calls to the customer at 8:42 PM, 9:08 PM and 9:43 PM advising the cooperative to switch from gas to an alternate fuel. The company provided a list of outbound calls made by the VRU on the evening of March 2, 2009. The telephone number associated with the cooperative were the numbers provided prior to the winter season as required by the company's interruptible procedures which are documented in the company's Gas Transportation Operating Procedure (GTOPs). The following telephone numbers used by the VRU on the evening of March 2, 2009 were previously provided to the company by cooperative representatives:

845-358-3447	Mark Miller	Left message
845-598-0864	Mark Miller's cell	Confirmed
845-893-3542	John Schutz	Left message

Because one of the three calls was confirmed, the company's representative did not place any further calls to the cooperative that evening. However, the cooperative did not switch to its alternate fuel as directed by the VRU message. As such, a company account engineer attempted to contact Mr. Miller the following morning at approximately 8:00 AM. Mr. Miller was not contacted at the number provided for 24/7 contact, so the account engineer left a message. The message informed the cooperative that it should have switched to its alternate fuel the prior evening and that if it had not switched, it should do so immediately. However, despite this clarification, the cooperative did not switch to its alternate fuel until seven (7) hours after the 8:00 AM follow-up call (i.e. until between 3:00 PM and 3:30 PM on the afternoon of March 3, 2009).

The cooperative asserts that it understood the message to mean that the interruption was not effective until midnight the following evening (i.e. 27 hours after the VRU notice was initiated). The company contends that the cooperative's assertion is not only unreasonable, it also fails to explain why when provided with a follow-up notice the following morning, the cooperative still failed to switch to its alternate fuel in a timely manner. Furthermore, the correspondence of the cooperative in this case demonstrates that the cooperative has failed to review the outreach and education materials repeatedly provided to it on the rights and responsibilities as an interruptible customer and has marginalized the importance of interrupting in a timely manner when called upon to do so.

The cooperative also asserts that a contributing factor to its confusion regarding the timing for interruption was the fact that the notice did not state that there was an emergency. The company sent the interruption notice to all cooperative contacts after hours on one of the coldest days of the winter. The company feels that the cooperative could not have assumed that this was merely a test. The company states that in the

sustained the interruptible penalty charges. For the record, the informal hearing officer's decision was subsequently appealed by the complainant.

## **Analysis**

The issue to be addressed is whether the company applied the disputed charges to the account in accordance with existing regulations, procedures and the company's tariff.

This customer receives gas service under Service Classification No. 8. The service is subject to interruption by the company at any time upon four (4) hours notice to a customer. Customers electing to use this service must maintain operable alternate fuel facilities including adequate reserves of the alternate fuels based on peak winter period requirements. Customers taking interruptible transportation service are subject to a higher tariff rate for gas consumed during a period of interruption.

The rates for interruptible transportation service are significantly lower than rates for service supplied under the company's service classification for firm gas service. The higher tariff rate imposed on the unauthorized use of gas service is intended to ensure that all subscribers to this special rate keep their dual fuel systems in proper working and adhere to their commitments so as to assure interruption of gas to an alternate fuel supply. The company must have the ability to serve firm customers during cold weather when gas supplies run low. The reasonable purpose of the higher tariff rate is to insure that this ability is not compromised.

On October 21, 2009, a letter was sent to the complainant from the OCS. The letter reiterated the company's findings and position. It was determined that the interruptible tariff rate in this case is valid because the company made several attempts to contact the cooperative. In addition, if there was any question as to when the switch-over should take place, the customer should have contacted the company for clarification.

According to the company's records, the following is the transcript of the interruption notice that was called in to the customer by telephone during the evening of Monday, March 2, 2009:

"Please hold for an important message from Orange & Rockland Utilities. Orange & Rockland Utilities is calling for a customer gas interruption as of Tuesday, March 3<sup>rd</sup> at midnight for our interruptible transportation customers. As of Tuesday, March 3<sup>rd</sup> at midnight, you are expected to reduce your energy consumption to zero usage. All gas used past Tuesday, March 3<sup>rd</sup> at midnight will be subject to penalty billing per the tariff. At this point, our gas control area has called for the interruption period to last for 4 hours. Should you have any questions, please call the hot line at 1-877-434-4100 or contact your account engineer. You will be contacted again when you can return to using natural gas. Thank you."

Under the section, Customer Communication Notices of the company's Gas Transportation Operating Procedures, it is stated that, "The company will provide at least 4 hours advance notice of a service interruption to interruptible customers by Mass Notification System via telephone". Similar language is stated in the applicable company tariff leaf. This means that the company should have contacted the customer

electronically, e-mail your appeal to the Secretary of the Public Service Commission, Jaclyn A. Brillling, at:

Secretary@dps.state.ny.us

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,



John P. Thompson  
Informal Hearing Officer  
Office of Consumer Services



November 17, 2010

Mr. Thompson  
State of New York  
Department of Public Service  
90 Church Street  
New York, New York 10007

RE: Case # 916797  
Salisbury Point Cooperative

Dear Mr. Thompson:

Pursuant to our phone conversation today and our conference call of November 4, 2010, I would like to recount the events that occurred this morning in regard to Orange & Rockland's gas interruption notification procedure.

At 7:49 a.m. this morning, I had a missed call on my cell phone. I saw this at approximately 8:30 a.m. and returned the call to 845-364-4050. It rang about 10 times and there was no answer or answering machine. I called the number again shortly before 9:00 a.m. with the same result.

I then went to Salisbury Point to drop off payroll and other correspondence at the building. The Superintendent, Mark Miller, asked me if I had received a call from Orange & Rockland earlier in the morning concerning a gas interruption. I told him I did not have a voicemail message, only a missed call. He also had a missed call on his cell phone at 6:27 a.m. from the same number (845-364-4050) but no message. He then played a partial message that was received and recorded on his office phone. That call came in at 5:42 a.m. and here is the complete text of the message:

"If you have any questions, please call the gas interruption hotline at 1-877-434-4100 or contact your Orange & Rockland major account engineer. You can return to using natural gas at 8:00 p.m. on Wednesday, November 17, 2010. If you would like to hear this information again, press the star key now or press the pound key to end this call and confirm receipt of this message."

42 RIVER STREET, 2nd FLOOR, SLEEPY HOLLOW, NEW YORK 10591  
TEL: (914) 524-8600 FAX: (914) 524-9100  
WWW.BLUEWOODSMGMT.COM

Mark had the good sense to call Dan Rodgers of Orange & Rockland and ask what was going on. Mr. Rodgers told him that a gas interruption was scheduled for 1:00 p.m. on Wednesday November 17<sup>th</sup> and that it would end at 8:00 p.m.

We have taken the appropriate steps to comply by switching over to oil. However, there is clearly a problem with Orange & Rockland's messaging system. I called the number that was included in the taped message and listened to a lengthy menu of options. There is no option that relates to an interruption in gas notification contained in the menu, so I waited for a representative to pick up. Eventually, one did but could not locate the gas accounts for the property. In any event, I invite you to call either of the numbers to confirm the information stated above.

I was also told by Mr. Rodgers that a call was placed to my office phone (914-524-8600), presumably prior to 9:00 a.m. I received no recorded message at my office and the message on my phone during non-business hours instructs callers to hold for a live operator if the call is an urgent matter. The live operator also did not receive a call.

After being told by Mr. Rodgers that there must be a problem with all of our phones (my cell phone, my office phone, Mark's cell phone and Mark's office phone), I believe I may know what actually happens. As soon as any phone "answers", the Orange & Rockland message immediately begins to play even though it appears that it is playing over a recorded message on the receiving line. The Orange & Rockland recording is either being completely lost or, at best, partially recorded, as was the case with the call to the Super's office phone.

If you have any questions, pertaining to this matter, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald E. Wilson", with a long horizontal flourish extending to the right.

Donald E. Wilson

DEW:gh  
cc: Board of Directors



Subj: **Re: Fw: Salisbury Point Cooperative Case # 916797**  
Date: 11/19/2010 10:20:25 A.M. Eastern Standard Time  
From: DonBlueWoods@aol.com  
To: john\_thompson@dps.state.nv.us

Mr. Thomson -

In response to Orange and Rockland's letter which you forwarded to me, the first call made to 845-358-3447 was partially received. We have saved the entire recording. Had we not received the portion that we did, we would not have known there was an interruption, and we have been penalized. According to O and R, that call was not confirmed.

The ensuing three calls were not received, although O and R says a message was left. If that is the case, why is the first call "not confirmed", when part of the message was left. My cell and Mark's cell have the call coming in and they are stored as "missed call". There were no voice mail messages left. In regard to my office phone, neither the answering machine or the live operator service that we use have any record of a call being received or recorded.

I invite you to call the number left on the tape by O and R and try to find the prompt that has any relationship to gas interruption. The only comment that is close refers to "if you are having a gas or electrical emergency" and I don't think that is the correct prompt.

the claim by O and R that this problem is because of our "telecommunication equipment is ludicrous. I receive other taped messages on my answering machine in their entirety. They are apparently programmed to begin after the answering machine says to begin the message.

Donald Wilson