

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 10-E-0212 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Bradford Hall Apartments of the Informal Decision Rendered in Favor of Consolidated Edison of New York, Inc. (833328).

COMMISSION DETERMINATION
(Issued and Effective March 18, 2013)

COMPLAINT: Responsibility for replacement of a utility pole

DISPUTED AMOUNT: Cost of Pole Replacement¹

PERIOD INVOLVED: Current

SUMMARY

Bradford Hall Apartments (Bradford Hall or complainant) first contacted the Office of Consumer Services (OCS) in November 2008 disputing responsibility for the cost of replacing a utility pole located on and used to provide electric service to complainant's property.² By an undated letter received on May 3, 2010, complainant appeals a March 24, 2010 informal hearing decision, which found that Consolidated Edison Company of New York, Inc. (Con Edison or the utility) had provided sufficient evidence to show that complainant was responsible for the maintenance and, if necessary, replacement of the pole in question. For the reasons discussed below, we uphold the informal hearing officer's decision.

¹ No amount has been held in dispute because the pole has not yet been replaced.

² Complainant was represented during the initial complaint process and at the informal hearing by Mr. Randy Elson of Barhite & Holzinger as the Managing Agent of Bradford Hall Apartments. On appeal, complainant is represented by Mr. Wayne Lafreniere, President of Bradford Hall Apartments.

DISCUSSION

Bradford Hall is a multi-family building consisting of 17 individually metered cooperative apartments in Bronxville, New York. The building - situated along one side of a private road known as Alden Place - receives its electricity from Con Edison's facilities located on Midland Avenue.³ The service runs from an underground service box on Midland Avenue to a pole (Pole #1) located on another owner's private property (adjacent to complainant's property) and then continues overhead to a second pole (Pole #2, the pole in question) located on complainant's property, and finally to the apartment building itself.

Utility records show that on three occasions between May 2007 and August 2008, the utility responded to the following issues involving the overhead service to Bradford Hall: low-hanging wire (May 7, 2007), downed wire/lights (October 12, 2007), and downed wire/no lights (August 16, 2008). Service Layouts dated June 16, 2008, and August 27, 2008, were sent to complainant stating that Pole # 2 was in poor condition and in need of replacement, and warning that, in the event the service line came down again, it would not be reattached to Pole #2 because of the pole's deteriorated condition.⁴

In November 2008, complainant contacted OCS to dispute responsibility for replacing the pole on its property. Complainant asserted that the pole was owned by Con Edison and that the utility was therefore responsible for its replacement. By letter dated February 12, 2009, staff issued its initial

³ Midland Avenue (a public street) runs perpendicular to Alden Place and is located approximately 100 feet from complainant's property line.

⁴ A Service Layout, provided for references purposes to a customer or contractor, indicates the utility specifications that must be followed for planned work.

decision upholding the utility's determination that Pole #2 is customer-owned, and that, as such, complainant was responsible for any repair, relocation or replacement. Complainant continued to dispute responsibility and requested an informal hearing, which was held on March 4, 2010. In his March 24, 2010 decision, the informal hearing officer concluded that the utility's responsibility ends at Pole #1 - located on private property adjacent to complainant's property - and that absent any easement allowing Con Edison to install and maintain its facilities on private property, all facilities thereafter (including Pole #2) are complainant's responsibility, with the electric meters being the only exception.

SUPPLEMENTAL INFORMATION

At the informal hearing, complainant asserted that while Bradford Hall received no compensation for shared use of Pole #2, Con Edison received financial gain by charging Cablevision and the telephone company for the right to attach their facilities to the pole and should therefore bear the cost of replacing Pole #2. Because neither the utility nor the hearing officer addressed this assertion, staff requested Con Edison to provide details regarding what compensation, if any, it received from Cablevision, or any other utility, for use of Pole #2.⁵ In an e-mail dated January 10, 2013, Con Edison submitted the following response:

With regard to the customer's allegation, we maintain the fact that the Utility Pole in question is not a Con Edison pole, nor do we receive any compensation whatsoever for Utility wires, (cable/telephone) running across or connected at that location.

In a subsequent e-mail also dated January 10, 2013, the utility submitted the following:

⁵ Staff's letter to Con Edison dated October 17, 2012.

We do receive a fee from cable and phone for their lines between OUR POLES. We DO NOT receive a fee if it's a Customer pole. In this particular case, WE DO NOT RECEIVE a fee.

DETERMINATION

The primary issue in this case is whether complainant is responsible for paying the cost associated with replacing the utility pole situated on the property of, and providing service to, Bradford Hall.

Complainant does not dispute that both poles for Bradford Hall's service line⁶ are located on privately-owned property and that the pole in issue, which is the second supporting structure for the service line, is located on complainant's property.⁷ The service line (including the two poles) runs from the public right-of-way across an adjoining privately owned property and onto complainant's property. In addition, complainant states that Bradford Hall was built in 1935 and does not dispute the utility's suggestion that the pole in question was installed during the 1930s.⁸

In its appeal letter, however, complainant reiterates its previous assertion that the utility's tariff requires it to provide service to, and maintain, "the first supporting structure on the customer's property"⁹ (emphasis added by

⁶ A service line is defined as: "an electric line used to connect a distribution line to an individual customer's meter or point of attachment; a service line, at the Company's discretion, may be connected to two or more meters at a single premises." PSC No. 9 - Electricity, General Information, III(3)(A)(10), Leaf No. 26 (effective April 1, 2008).

⁷ It is not known, nor is it relevant to this case, whether the adjoining properties were owned by a single party when the service was originally installed.

⁸ See Informal Hearing Decision, pp. 2 and 6.

⁹ "The Company will install a service line from its street system to the first point of attachment on or near the front face of the building or to the first intermediate supporting structure on the Customer's property which, in such case, shall be the

(continued)

complainant) and argues that Pole #2 is the first pole on complainant's (the customer) property and therefore the responsibility of Con Edison.

Con Edison responds that the pole in question lies beyond its point of service termination for Bradford Hall (in this case, at Pole #1). It suggests that the tariff provision relied on by complainant referred to the more general situation in which an applicant's property abuts the street, and the first intermediate supporting structure is usually located close to the edge of the public right-of-way on property owned by the customer; however, the utility says, when the property is a land-locked parcel, such as complainant's, the utility's point of attachment for the service is the first pole on the private property (of the intervening owner) abutting the public right-of-way (in this case Pole #1).¹⁰ It points out too that the tariff provision has been revised and now indicates that, for overhead service, the utility "will install a service line from its street system to the first point of attachment on or near the front face of the building or to the first intermediate supporting structure for the building ... which, in such case, shall be the point of service termination," and the customer will "furnish, install and maintain," all supporting structures, and service line and equipment beyond the first supporting structure"¹¹

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point of service termination." PSC No. 9 - Electricity, General Information, III(3)(D)(1), Leaf No. 31 (effective January 1, 1994).

¹⁰ Con Edison letter to Staff dated December 7, 2010.

¹¹ See PSC No. 9, General Information III(3)(D)(1) (effective March 1, 2010). The utility's current tariff, in effect since April 1, 2012, contains the same provision although it has been renumbered. See PSC No. 10, General Rules, 5.4.1, Original Leaf No. 41.

Under the circumstances here, the tariff provision relied on by complainant, and its subsequent revision must be read in the context of the regulations. The relevant regulations include 16 NYCRR §98.4, which states:

If a utility installs a service line beyond the limits of a public right-of-way, the utility shall maintain, repair and if necessary replace such service line, at its own expense, to the same extent that the utility bore the cost of installing the service line, and provided that any necessary easements are provided by the applicant or customer.

There is no evidence that either Con Edison or its predecessor bore any of the cost of installing the service line or poles involved in this case. In addition, as discussed below, there is no evidence that complainant provided any easement to Con Edison for the portions of the service line beyond the public right-of-way. Under our regulations, therefore, Con Edison is not responsible for the cost of replacing the pole on complainant's property.

Complainant asserts on appeal that when Con Edison acquired or merged with Westchester Lighting Company in 1936, it inherited a 1926 easement¹² which granted Westchester Lighting, its successors and assigns, the right to construct and the obligation to maintain and operate its pipes and other fixtures on complainant's property and that Con Edison is therefore responsible for the maintenance, and/or replacement of Pole #2.

While Con Edison has not made an adequate showing that the December 1926 easement (granted by Dudley B. and Kate B. Lawrence as the owners of a "certain tract of land, known as Alden Place") did not grant Westchester Lighting and its successors an easement, that easement was by its own terms limited to the private street (still) known as Alden Place. In

¹² See partial document attached as "Exhibit B" to complainant's June 2010 appeal letter.

addition, the easement was limited, by its own terms, to the purpose of providing gas service.¹³

A diagram (submitted by the utility) and a survey map of the area (submitted by complainant) show that complainant's service line does not run alongside or within Alden Place; rather the service line runs parallel to Alden Place, but on the other side of structures fronting on Alden Place (the service line runs along the side property line of the privately-owned land parcel situated adjacent to Bradford Hall and abutting Midland Avenue - and along the rear property line of Bradford Hall. In addition, the service at issue is electric service, not gas, which is the only purpose for which the easement was granted. Therefore, whether or not there was an easement appears to be irrelevant to the issue here.

Under the circumstances here, Bradford Hall, rather than Con Edison, is responsible for the maintenance and replacement of the service line and facilities beyond the public right-of-way. Accordingly, complainant is responsible for the costs of replacing the pole on its property to ensure continued and safe service.¹⁴

¹³ The easement says that Westchester Lighting Company "has been organized for the purpose of furnishing and supplying gas and electricity for light, heat, power and other purposes." However, all references to the purposes for which the easement is granted refer only to construction, maintenance and operation of mains, pipes and other fixtures and apparatus in the easement areas "for the purpose of conducting and transmitting gas for light, heat, power and other purposes." There is no indication that the easement's purpose included the provision of electric service to the property.

¹⁴ The utility's tariff provides that Con Edison has the right to "withhold its service, or discontinue its service, whenever such installation or part thereof is deemed by the Company to be unsafe, inadequate or unsuitable for receiving the Company's service" See PSC No. 9-Electricity, General Information, III(9)(A), Leaf No. 41 (effective January 1, 1994).

CONCLUSION

To assure that all aspects of this case have been properly addressed, the complaint file has been thoroughly reviewed. We determine that complainant, not the utility, is responsible for the costs of replacing the deteriorated pole located on complainant's property and providing its electric service. Complainant's appeal is therefore denied and the informal hearing decision is upheld.