NEW YORK STATE OF OPPORTUNITY. Department of Public Service

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

Public Service Commission
Rory M. Christian
Chair and
Chief Executive Officer

Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore
Commissioners

June 28, 2022

Nurpinder Bathla
Balwinder Bathla
[redacted]

Wendel Bedassie
Shantkumarie Bedassie
[redacted]

Re: Shared Meter Case # 213767
[redacted]

This is to advise you that a decision has been reached in the above captioned complaint and is detailed in the attached determination. This decision is effective on the date of this letter.

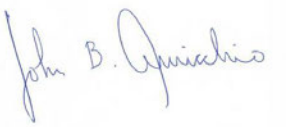
You may petition the Commission for rehearing, or may challenge this decision in New York State Supreme Court through judicial review pursuant to Article 78 of the Civil Practice Law and Rules. If you request a rehearing, the request will be considered by the full Commission on the petition and any response filed, and does not include an in-person hearing or other appearance. A petition for rehearing must, pursuant to Section 22 of the Public Service Law, be received at the Secretary's office no later than 30 days from the date on this letter. The Secretary may reject petitions that are untimely. The petition must be sent to:

Email: secretary@dps.ny.gov
Fax: (518) 474-9842
Michelle L. Phillips, Secretary
Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

A petition for rehearing must also meet the requirements of the Commission's rule, 16 NYCRR §3.7(b), which says that, "Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination." This rule also requires that a rehearing petition "separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing." A rehearing petition that does not meet the requirement for separate identification of each alleged error or new circumstance, and for explanation of how each error or new circumstance warrants rehearing, may be rejected.

You may also seek judicial review, without first requesting rehearing by the Commission. The time limit under state law for commencing an Article 78 proceeding to obtain judicial review of a Commission determination in New York State Supreme Court is four months from the date that the Designee determination becomes final and binding on the party seeking review.

Sincerely,



John B. Auricchio
Acting Director
Office of Consumer Services
As Designee of the New York State
Public Service Commission

Enclosure

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Consolidated Edison Company of New York, Inc. (Con Edison or Company)
Attention: Suzanne Kwon

Re: Shared Meter Case # 213767
[redacted]

Introduction

In a letter received by the Public Service Commission (Commission) on January 27, 2022, Nurpinder Bathla and Balwinder Bathla (Owners) appealed Con Edison's imposition of a twelve-month assessment in the amount of $4,887.38 ($3,002.45 electric and $1,884.93 gas) and shared usage charges totaling $7,725.64 ($3,386.57 electric and $4,339.07 gas) to be refunded to Wendel Bedassie and Shantkumarie Bedassie (Tenants) as required by the Shared Meter Law (Public Service Law § 52) due to shared electric meter and gas meter conditions.

Shared Meter Law (§ 52.5 (d)) states in part:

> "the utility shall… bill the owner and refund to the shared meter customer an estimated amount of the charges for twelve months of all service measured by the shared meter."

Shared Meter Law authorizes the Commission or its Designee to reduce the twelve-month assessment to a minimum of 25 percent of the original amount, should it be found unduly burdensome or unfair.

Owners' Position

The Owners stated: they were in receipt of Con Edison's April 28, 2021 determination letter identifying the shared meter conditions; the Tenants' complaint to Con Edison is in error because the Tenants previously agreed to the existence of the shared meter conditions and the Tenants were collecting payments from the basement tenant; the Tenant filed the complaint with Con Edison to collect more money from the Owners; a response was submitted to Con Edison on June 11, 2021 via certified mail disputing the shared meter determinations;[1] signed statements from the Tenant and basement occupant acknowledging payments and receipt of payments between the two parties; no response was received from Con Edison to the Owners' June 11, 2021 letter;[2] to avoid service disconnection, payments have been made to Con Edison;[3] efforts are ongoing to make corrections to the shared meter conditions but it is difficult to correct

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1 Con Edison's April 28, 2021 letter stated in paragraph 6 that if the Owner disagreed with Con Edison's determination that a shared meter condition existed and was seeking reversal of the determination, a complaint must be filed with the Department of Public Service within 45 days from the date of the letter. The Owners' June 11, 2021 letter was addressed to Con Edison. Office of Consumer Services (OCS) Staff conducted a search for correspondence received prior to the Owners' correspondence received on January 27, 2022 but found no such correspondence requesting review of Con Edison's determinations.

2 See footnote 1.

3 The payments identified by the Owners were made to the Con Edison account in the Owners' names.

due to the cost;[4] and, the Owners are seeking relief from the shared meter charges and twelve-month assessments.

Tenants' Position

On March 8, 2022, Staff wrote to the Tenants requesting comment on the Owners' appeal. Staff's letter advised the Tenants that the twelve-month assessment could be reduced to 25 percent of the original amount billed. Staff did not receive a response from the Tenants and Staff's letter was not returned by the Post Office.

Analysis

Shared Meter Law instructs the Commission's Designee to consider the amount of service used outside the Tenants' apartment, as well as any other extenuating circumstances, to determine whether the twelve-month assessment is unfairly burdensome.

On April 26, 2021, Con Edison inspected the premise and found the Tenants' electric meter was supplying service to an undetermined source outside of the Tenants' apartment in addition to the unmetered basement apartment. Con Edison also found the Tenants' gas meter was supplying heat and water heating to an undetermined source in addition to the unmetered basement apartment.

[4] The Owners stated that the cost to correct the shared meter conditions was more than four times the rent but did not provide a copy of the current lease agreement. As of the date of this determination, the Owners have not provided any documentation to Con Edison that would meet the extraordinary cost criterion. Extraordinary cost is defined in the Shared Meter Law as the cost to correct the shared meter condition that exceeds four months rent. Documentation required to prove extraordinary cost would include a valid current lease agreement, a valid mutual agreement for each shared meter condition (must be separate), and a valid estimate for repair to each shared meter condition (the electric estimate must be separate from gas estimate). Additionally, the costs to correct both shared meter conditions cannot be combined to arrive at a figure over four times the rent. The cost to correct each condition must exceed four times the rent.

Shared Meter Law also provides that the Owner has 120 days from the date of notification to correct the condition. Because no repairs were made, Con Edison, in compliance with the regulations, established the Owners as the customer of record for the electric and gas services effective August 27, 2021.

Shared Meter Law, which became effective October 1991, 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 were present in this case.[5] Therefore, any agreement that may have existed between the Owners and the Tenants[6] for shared usage is not valid.

Decision

Shared Meter Charges

Shared Meter Law provides that the Owners are responsible for the service used outside the Tenant's apartment. Therefore, the Owners are responsible for the shared meter charges totaling $7,725.64 ($3,386.57 electric and $4,339.07 gas). Staff reviewed the basis the Company used to calculate the charges and found it fair based on the Tenants' appliances, the shared area appliances, and the Tenants' billed electric and gas consumption histories.

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[5] Shared Meter Law provides that agreements between landlords and tenants are only allowed if the shared use is minimal (less than 75 kWh of electricity, 5 ccf of gas per month, or less than 10 percent 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).

[6] This also applies to agreements formed between the Tenant (customer of record) and other tenants in the building.

Twelve-Month Assessment

Shared Meter Law provides that whenever a shared meter is found and the shared usage exceeds 75 kWh of electricity or 5 ccf of gas per month, the Owners are billed an assessment equivalent to twelve months' bills on the shared meter. This requirement is called a "twelve-month assessment." In this case, the shared meter conditions existed for 66.47 months and the annual combined shared usage was estimated at $1,394.73 ($611.39 electric and $783.34 gas). This calculation means that the combined assessment is 3.5 times the shared charges and is excessive. Because the Tenants were fairly compensated, through apportionment for shared usage, Con Edison is directed to reduce the combined twelve-month assessment to $1,221.84 ($750.61 electric and $471.23 gas), which is 25 percent of the original billed amount of $4,887.38 ($3,002.45 electric and $1,884.93 gas). This adjustment is the **largest** reduction of the twelve-month assessment permitted by law. Under Shared Meter Law, the Commission or its Designee has no authority to waive the assessment or to reduce it by more than 75 percent, whatever the circumstances.

Conclusion

In compliance with Shared Meter Law, as Owners of the property, Nurpinder Bathla and Balwinder Bathla are responsible for the shared usage charges of $7,725.64 ($3,386.57 electric and $4,339.07 gas) and the reduced assessment charges of $1,221.84 ($750.61 electric and $471.23 gas). These charges total $8,947.48.

The charges of $8,947.48 do not include the bills rendered on the shared electric and gas account from August 27, 2021 until such date, when Con Edison verifies (per

Shared Meter Law) that repairs have been completed.[7] The Owners are responsible for these charges in compliance with the regulations.

[7] As of the date of this determination, the Owners have offered Con Edison documentation of repairs as they stated in the prior correspondence. It is the Owners' responsibility to provide documentation of repairs to Con Edison and to request from Con Edison a field inspection to verify those repairs.