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Secretary

February 24, 2014

Ms. Ellen Bindler
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Atlantic Beach, NY 11509

Ms. Vivienne Bracken
Senior Vice President, Shared Services
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Brooklyn, NY 11201

Re: Case 11-G-0187 (005528), Spillane Parkside Corp./Grid-Metro
Case 11-G-0188 (005534), McDonald's/Grid-Metro
Case 11-G-0189 (005550), Brooklyn PMC/Grid-Metro
Case 11-G-0190 (005572), Spillane Page/Grid-Metro
Case 11-G-0192 (005524), PRPKFC Holdings/Grid-Metro
Case 11-G-0193 (005538), Brooklyn & Ave. V/Grid Metro
Case 11-G-0194 (005520), PRPKFC Holdings/Grid-Metro
Case 11-G-0195 (005512), PRPKFC Holdings/Grid-Metro
Case 11-G-0196 (006124), 82 Court St. Corp./Grid-Metro
Case 11-G-0202 (004986), Grid-Metro/Mercy First
Case 11-G-0206 (008832), Grid-Metro/Brooklyn PMC
Case 11-G-0207 (005566), Grid-Metro/Bay Hylan Enterprises
Case 11-G-0208 (005556), Grid-Metro/Bay Hylan Enterprises
Case 11-G-0008 (000352), Grid-LI/Comsewogue School District
Case 11-G-0009 (000364), Grid-LI/ Pine Hollow Country Club
Case 11-G-0127 (002652), Grid-LI/ Veterans Products Company
Case 11-G-0129 (018800), Grid-LI/Atherton Franchise
Case 11-G-0130 (014458), Grid-LI/John Frocaro
Case 11-G-0132 (024580), Grid-LI/East Meadow School District
Case 11-G-0133 (020906), Grid-LI/Massapequa School District

At its session of February 20, 2014, the Public Service Commission decided a total of 22 appeals, including the above-listed 20 appeals. The complainants in the cases listed above are represented by Utility Check, Ltd. A copy of the Commission's Determination is enclosed, as are copies of two appendices to the determination. Appendix A, as supplied to Ms. Bindler with this letter, has been redacted with respect to identifying information for the two accounts not represented by Utility Check; Appendix B is supplied to Ms. Bindler without redaction since Utility Check, Ltd. represents all accounts it concerns.¹

The applicable regulations (16 NYCRR Section 12.14[b]) provide that in deciding appeals of informal hearings or reviews, the Commission "may uphold, change, reject or return the decision to the informal hearing officer or reviewer for additional consideration." The Commission also has the discretion to order a formal evidentiary hearing if it finds this to be appropriate under the circumstances.

In its Determination, the Commission concluded that both Grid-Metro and Grid-LI failed to properly implement the test required by their tariff, for determining annually since March 1, 2008, whether to assign an SC No. 2 customer to the more expensive heating or less expensive non-heating rate of that service classification. The Commission determined that, in implementing the test, which requires comparing January and July usage, the utility should not have taken degree day or weather normalization information into account with regard to calculating either month's usage.

In its determination, the Commission modified the following four informal review decisions as to their reasoning and upheld their requirements that specified accounts be rebilled at the non-heating rate for particular 12-month periods: Cases 11-G-0202 (Grid-Metro/Mercy First), 11-G-0206 (Grid-Metro/Brooklyn PMC), 11-G-0207 (Grid-Metro/Bay Hylan), and 11-G-0208 (Grid-Metro/Bay Hyland).

The Commission also modified the following four informal review decisions as to their reasoning, and reversed them in full or part to require rebilling at the non-heating rate for all or some disputed periods: Cases 11-G-0188 (McDonald's/Grid-Metro), 11-G-0189 (Brooklyn PMC/Grid-Metro), 11-G-0193 (Brooklyn & Ave. V/Grid-Metro), and 11-G-0196 (82 Court St./Grid-Metro).

¹ The versions of the Appendices provided to the other two customers' representative have been redacted to limit identifying information for accounts represented by Utility Check. The individual contact persons for the customers represented by Ms. Bindler, to whom this letter is copied, have been sent copies of the determination; they may access redacted versions of the Appendices at <http://documents.dps.ny.gov/public/Common/AdvanceSearch.aspx>, by entering 10-G-0527 or the customer's own case number from the list below, and selecting either redacted Appendix from among the documents posted there.

The Commission upheld the results reached by the informal review decisions in the following five cases because the relevant accounts would not have qualified for rebilling on the non-heating rate for any disputed period had the proper test for assigning the heating or non-heating rate been applied: Cases 11-G-0187 (Spillane Parkside/Grid-Metro), 11-G-0190 (Spillane Page/Grid-Metro), 11-G-0192 (PRPKFC Holdings/Grid-Metro [005524]), 11-G-0194, (PRPKFC Holdings/Grid-Metro [005520]), and 11-G-0195 (PRPKFC Holdings/Grid-Metro [005512]) .

The Commission upheld the informal review decisions in Cases 11-G-0008 (Grid-LI/Comsewogue School District), 11-G-0009 (Grid-LI/Pine Hollow Country Club), 11-G-0127 (Grid-LI/Veterans Products Company), 11-G-0130 (Grid-LI/John Frocaro), and 11-G-0132 (Grid-LI/East Meadow School District).

Finally, the Commission modified the informal review decisions in Cases 11-G-0129 (Grid-LI/Atherton Franchise) and 11-G-0133 (Grid-LI/Massapequa School District) as to the results reached, because, although the reasoning of the decisions was generally correct, when the proper test is used to determine January usage, not all periods for which the informal review decisions required rebilling of these customers qualified.

With respect to the individual complainants qualifying for a refund for one or more periods, the Commission's determination requires the following:

1. As soon as possible, and in advance of making refunds required by this determination, Grid-Metro is to:
 - contact complainants' representative (Utility Check) and request for any account entitled to a refund from the respective utility, if the account is no longer held by the same customer, current contact information for the customer (the name of the recipient for the refund and the recipient's mailing address, and – if the recipient is not an individual - the name of the individual at the address provided to whose attention the refund should be sent).

Complainants' representative should respond promptly.

2. Within 30 days of the date this determination is issued, Grid-Metro for all accounts shown in Appendix A to qualify for rebilling at the non-heating rate for a specified disputed period (including these two complainants' accounts, as well as other accounts) is to:
 - A. Make refunds (including interest, as required by 16 NYCRR Part 277) to the specified complainants for each specified period.

- B. Inform the Secretary to the Commission² and each complainant's representative in writing, on the date refunds are sent, that such refunds have been made, and provide to each consultant (with respect to all complainants that consultant represents) and to the Secretary to the Commission (with respect to all complainants):
- a list showing, for the account(s) of each complainant found entitled to rebilling, the following:
 - the periods covered by the rebilling;
 - the principal and interest amounts, and the total refund.
3. The Secretary in her sole discretion may extend the deadlines set forth in this determination (both with respect to complainants and with respect to current SC No. 2 customers), provided the request for such extension is in writing, including a justification for the extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

The Commission's determination also states that both utilities must properly implement the tariff provision going forward, and are expected to do so in determining rate assignments for SC No. 2 customers for billing cycles after March 1, 2014.

The Commission's decision, effective the date of this letter, may be challenged through judicial review pursuant to Article 78 of the Civil Practice Law and Rules, or may be the subject of a petition for rehearing. A petition for rehearing must, pursuant to Section 22 of the Public Service Law, be sent to the Secretary to the Commission at the above address (or by electronic mail to secretary@dps.ny.gov), and must be received at the Secretary's office no later than 30 days from the date of this letter. The Secretary may reject petitions that are untimely.

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.

² This and any other information required to be provided to the Secretary should be sent by e-mail to secretary@dps.ny.gov and must reference, in addition to Cases 10-G-0527, et al., the specific cases (using appeal case numbers) for which it provides information.

Judicial review may be sought 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 is four months from the date that the Commission determination becomes final and binding on the party seeking review. Please note that a request for rehearing may not extend this four-month period to seek judicial review of the enclosed decision.

By direction of the Commission,

Kathleen H. Burgess
Secretary

cc: Ms. Stephanie Rothberg (contact for: Cases 11-G-0187- Spillane Parkside;
11-G-0190 - Brooklyn PMC; 11-G-0190 - Spillane Page; 11-G-0193 – Brooklyn &
Avenue V Enterprises; 11-G-0206 - Brooklyn PMC; 11-G-0207 - Bay Hylan Enterprises
[005566]; and 11-G-0208 - Bay Hylan Enterprises [005556])
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Mr. Albert Cuadra (contact for Case 11-G-0188 - McDonald's)
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Melville, NY 11747

Mr. Robert Panzarella (contact for Cases 11-G-0192 – PRPKFC Holdings;
11-G-0194 – PRPKFC Holdings; 11-G-0195 - PRPKFC Holdings)
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Mr. Peter LaRose (contact for Case 11-G-0196 - 82 Court St. Corp.)
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Brooklyn, NY 11201

Ms. Carla Defrancisco (contact for Case 11-G-0202 - Mercy First [Angel Guardian Home])
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Ms. Stephanie Popky (contact for Case 11-G-0008, Comsewogue School District)
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