

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

CASE 07-S-0493 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Tower West Inc. of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc. (622793 & 635911).

COMMISSION DETERMINATION  
(Issued and Effective September 21, 2009)

The Commission received an appeal by Tower West Inc. (complainant) from an informal review decision dated April 17, 2007, in favor of Consolidated Edison Company of New York, Inc. (Con Edison or the utility).<sup>1</sup> The informal review officer directed the utility to revise one of two consecutively estimated steam bills issued by the utility. For the reasons discussed below, we uphold the informal review officer's decision.

BACKGROUND

Complainant is the owner of an apartment building receiving steam service from Con Edison. The service is used for space heating purposes during cold weather periods. Service is provided through two meters. Depending on load conditions, a meter regulating valve in complainant's metering configuration permits steam to flow and consumption to be recorded by one of two meters: a low capacity (or "base") meter records the consumption when the load (or demand) from the customer's equipment for steam is low, and a high capacity meter records the consumption when the load is high. During the heating season, the bulk of complainant's usage is recorded by the high capacity meter because of the magnitude of the load.

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<sup>1</sup> Complainant is represented by a consultant, Utility Rate Analysis Corporation (URAC).

On February 18, 2005, a utility employee making a regularly scheduled meter reading discovered that complainant's high capacity meter was not recording service. Therefore, the utility estimated complainant's usage for the period of January 21, 2005 to February 18, 2005, based on complainant's average consumption, per degree day,<sup>2</sup> during the same January to February billing period, over the last four years, which the utility determined was 2.6937 thousand pounds (mlb) of steam per degree day.

On March 8, 2005, the malfunctioning meter, was removed for testing purposes and replaced. Testing on March 23, 2005, confirmed that the meter was not recording. Since the inoperative meter was replaced during the next billing period, the usage for that period, February 18, 2005, to March 23, 2005, also had to be estimated. The utility used essentially the same methodology for this estimate as it had for the prior billing period. It calculated complainant's average usage per degree day during the same February to March billing period over the preceding three years, and used the result—2.7280 mlb per degree day—multiplied by the number of degree days in the February 18, to March 23, 2005 period to estimate the consumption for which it then charged complainant.

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<sup>2</sup> Heating degree days (referred to in this determination, for the most part, simply as degree days) which make it possible to relate outside temperatures to energy demand for heat and to compare usage in different periods regardless of temperature differences, are the number of degrees in a given period by which the average daily temperature is below 65°F. A larger number of degree days accumulated during a given period in a particular year (in contrast to the number in another period of the same length) indicates cooler temperatures occurred. Significant variations in usage per degree day may reflect changes in a customer's equipment or in how that equipment is used.

By letters to the utility dated June 5, 2006 (regarding to the February 2005 bill), and November 14, 2006 (regarding the March 2005 bill), complainant disputed the two estimated bills. Complainant asserted that the February 18, 2005, bill should be rebilled based on usage during the preceding January to February 2004 billing period of 2.3 mlb per degree day, while the March 23, 2005, bill should be rebilled based on the usage of 2.4 mlb per degree day (representing the average usage per degree day during the preceding February to March 2004 billing period and during the subsequent February to March 2006 billing period).<sup>3</sup> The utility denied complainant's requests and adhered to its original estimates of the February and March 2005 bills.

By letters to the Department of Public Service's Office of Consumer Services (OCS), dated August 9, 2006 (regarding the February 2005 bill) and December 12, 2006 (regarding the March 2005 bill), complainant objected to the utility's refusal to adjust the two estimated bills. In an August 25, 2006, response to Staff, a manager in the utility's steam department stated:

Typically, when an account has to be estimated or have adjustment units<sup>4</sup> added to it . . . , we look at the same monthly billing period with a similar number of degree days. In February 2005 the degree days were

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<sup>3</sup> Complainant's letter states that usage per heating degree day for the February to March 2004 billing period was 2.69 mlb per heating degree day, while usage for the comparable 2006 billing period was 2.40 mlb per heating degree day.

<sup>4</sup> Bills for steam service are based on the number of pounds of steam a customer uses. To determine the actual consumption, the difference between the current and previous reading of a steam meter is calculated. This amount (referred to as so many "units") is then multiplied first by the meter constant and second by the associated system-pressure correction factor. The result is the number of pounds of steam consumption during the billing period.

897. The closest month with a similar number of heating degree days was February 2001 with 846 and ... [usage] of 2.9031 [mlb per degree day]. While reviewing the February billing history the degree day analysis indicates that the lower number of heating degree days [during a February billing period in a given year], the higher the ... [usage per degree day]. ... What we actually did, was average the [the usage (mlb) per degree day for the] last four years (2004-2001) and billed the account accordingly. The average [mlb per degree day] came out to 2.6937 and [usage for the February 2005 billing period calculated on this basis was] 1,508 mlbs.

The utility's letter also stated that the same method was used to estimate the March 2005 bill but (in contrast to the estimate of the February 2005 bill) only three years of data were used because, for the March period, the billing history did not show "such a wide range of degree days."

Following complainant's request (in a September 13, 2006, letter) for the utility's procedures for estimating steam usage, Con Edison responded, in a submission to OCS, dated October 26, 2006, that the utility "generally follows similar procedures for estimating electric, gas and other consumption," and indicated that this means it takes into account available information from the current period (e.g., the number of degree days) and historical data for the comparable billing period in earlier years.<sup>5</sup>

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<sup>5</sup> Con Edison attached a description from its internal procedures in effect in 2000 for estimating electric billing for large commercial time-of-day accounts, which it indicated was relevant to how steam usage is estimated; the utility explained that in estimating steam usage, "degree-day usage" would be taken into account "instead of demand or load factor" (which were mentioned in the procedure provided). The attached electric estimating procedure stated:

"It is possible to estimate the billing using the available components from the current period and data from a comparable billing period. If the historical demand has been consistent (based on the historical data from a comparable period), it is used to estimate current billing.  
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OCS issued initial decisions dated October 31, 2006<sup>6</sup> (regarding the February 2005 bill) and January 12, 2007 (regarding the March 2005 bill), both of which upheld the estimated bills. Complainant requested an informal review in each case. The two informal reviews were eventually consolidated (since each concerned the propriety of the utility's estimate of a single bill for the same account). In her decision, dated April 17, 2007, the informal review officer concluded that the utility was permitted by its tariff and Commission regulations to estimate complainant's bills where an unmetered service condition existed or where there was good cause to believe an actual meter reading was incorrect.<sup>7</sup> However, she found that the estimate for the January to February 2005 billing period did not conform to the utility's "stated method of estimating a customer's usage" because it reflected an average based on usage per degree day for four, instead of three, preceding comparable (January to February) billing periods. The review officer, therefore, directed that the utility to rebill the period ending February 18, 2005, based on the average usage per degree day during the 2002, 2003, and 2004 January to February billing periods, only. The utility has not appealed from this requirement.

POINTS ON APPEAL

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In addition, if the historical load factor has been consistent, it too can be used to estimate current billing. If historical data is not available, estimates are developed in coordination with Energy Services."

<sup>6</sup> This supplemented an initial decision issued September 11, 2006.

<sup>7</sup> See 16 NYCRR 13.8(b)(1)(iii), and PSC No. 3-Steam, III. 4(g) Estimated Bills, Leaf No. 6A.

1. The informal review officer's approval of use of a three-year average to estimate usage was inconsistent with the Commission's policy of requiring use of "the best available information" in estimating bills, because use of average usage during a comparable period in each of the three preceding years gives weight to "periods when building operations might have been different."<sup>8</sup>
2. The informal review decision allowing use of a three-year average as a basis for the estimated steam billing was inconsistent with a prior informal review decision issued by the same review officer in a similar case.

DETERMINATION

The issue in this case is whether the utility properly estimated steam bills for two successive one-month periods, January to February 2005, and February to March 2005. Complainant does not challenge the utility's right to estimate the amount of steam used during the two periods. For the reasons discussed below, we uphold the informal review officer's decision.

As already stated, the utility estimated the two disputed bills by using, for the February 2005 bill, the average usage per degree day of the four preceding January to February billing periods and, for the March 2005 bill, the average usage per degree day of each of the three preceding February to March

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<sup>8</sup> Complainant argues that the two bills at issue should each be estimated based on the average of complainant's actual consumption, per degree day, during two comparable billing periods: the same monthly billing periods during the year preceding and the year following the estimate. While complainant prefers the foregoing method, it proposes alternatively that estimates be based only on the consumption per heating degree day during the comparable billing period one year before the disputed period. See Appeal, p. 3.

billing periods.<sup>9</sup> On appeal, complainant disagrees with the informal review officer's approval of the three-year average method used for the March 2005 bill and her concomitant requirement that the utility follow the same method for the February 2005 bill (rather than averaging usage during the January to February billing period for the preceding four years).

Complainant argues that a "three-year average" fails to take into account yearly changes in the operations of the building. Instead complainant proposes that the utility be required to estimate based on the average usage per degree day during the same monthly billing period during two years: the year preceding and the year following the disputed period. Although it views this method as fairest, complainant proposes in the alternative that the utility be required to estimate based on use only (in the case of a heating bill) of per-degree-day usage during the comparable billing period one year earlier.

Our regulations, 16 NYCRR §13.8(b)(2), require that an estimated bill be calculated using "an established formula or methodology which shall take into account the best available relevant factors for determining the customer's energy usage and, if applicable, demand usage" (emphasis added). Complainant's preference—an estimate based on averaging usage per degree day during two periods, the comparable billing periods one year before and one year after the disputed period—

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<sup>9</sup> The utility stated earlier in the complaint proceeding regarding the February 2005 bill that it also sometimes estimated a bill based on usage recorded during a comparable billing period (i.e., the same monthly billing period of a previous year) in which a similar number of degree days occurred, as the basis for its estimated billing. However, it did not in fact use this method to make an estimate in this case and we have no basis for considering this method on the record here.

ignores the requirement that a utility bill promptly and, therefore, do an estimate promptly, if it is unable to use or to obtain an actual meter reading. In a case like the instant one, where an estimate has to be used because a meter is not recording some or all usage, the estimate must be based on the relevant information available at the time the estimate is made. Review of whether the estimate was reasonable should be done on the basis of that same information.<sup>10</sup> Accordingly, we reject complainant's proposal.

Complainant's alternative proposal reflects the usual practice in the case of gas and electric service: estimates needed for billing a particular monthly period are often based on a single earlier period (usually the comparable period of the preceding year or, if that is not possible, often the period immediately preceding the one to be estimated). This is one possible method of taking into account what is clearly a relevant factor in developing an estimate—historic information about usage during similar billing periods. However, the fact that a particular method is used for making gas and electric estimates does not require that an identical method be used for steam estimates. Steam service is available only to a relatively small number of customers in a limited, but densely populated, part of Con Edison's territory (no other utility provides this service within the state). Steam bills are generally large, since customers are typically very large buildings using the service for heat, hot water, and/or air conditioning. As already indicated, past historical usage is certainly relevant. Degree days are also relevant in estimating

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<sup>10</sup> Where a meter is functioning properly and an estimate is made only because the meter could not be read, the estimate may have to be modified based on a subsequent actual reading. Normally, however, an over- or underestimate of consumption is automatically corrected by the subsequent actual meter reading.

the temperature-sensitive steam usage at issue here. Averaging usage per degree day for the comparable billing period in each of the preceding three years (presuming that such a prior year's usage is not itself an estimate, and that the customer has been receiving steam service serving the same functions for a three-year period preceding the period to be estimated) appears to take into account the best available relevant factors and to be a reasonable method of estimating a steam bill.<sup>11</sup>

Complainant contends in general terms that the utility's use of a three-year average gives too much weight to earlier periods during which "building operations might have been different." Complainant has not asserted, much less demonstrated, any specific respects in which operations in complainant's building differed during the January to March period of 2005, from building operations during the same period in 2002, 2003, and 2004. There may be circumstances in a particular case that would make estimating steam heating usage on the basis of average usage per degree day during the three prior comparable periods unreasonable or require modification of it. However, no such circumstances were documented or are apparent here.<sup>12</sup>

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<sup>11</sup> The utility employed the same three-year average method in another case we recently reviewed on this issue. Case 06-S-0296, Appeal by Trump Parc, Commission Determination (issued September 21, 2009). Since temperature-sensitive service was not involved in that case, the estimate did not rely on usage per degree day.

<sup>12</sup> Complainant also attempted, by brief references, to incorporate into its appeal arguments it made to the informal review officer that the utility had proposed (in response to its complaint and to Staff's requests for information) a variety of different and inconsistent methods of estimating bills including (i) another specific method of estimating a heating bill (use of the consumption found in a prior period characterized by a similar number of degree days to the period being estimated) and (ii) the utility's submission, prefaced by a statement that it  
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Complainant also argues that the informal review officer's decision was erroneous because it was not consistent with a July 21, 2004, informal review decision (2004 decision) by the same officer on another steam complaint.<sup>13</sup> However, the issue in the 2004 decision was the accuracy of steam charges—based on actual meter readings—for two consecutive monthly billing periods, rather than the propriety of a method used by the utility to estimate bills. In her 2004 decision, the informal review officer rejected the billing based on actual meter readings because she found that the meters had not recorded properly and, without consideration of any alternative methods of estimating, directed the utility to bill based on usage per degree day during the same two-month period of the preceding year.<sup>14</sup> In contrast, the informal review decision at issue here specifically upheld the manner in which the utility estimated the two disputed steam bills. Because the informal review decision currently on appeal was based on consideration

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"generally follows similar procedures for estimating electric, gas and other consumption," of a description of its procedure for billing large commercial time-of-day electric accounts. Complainant's argument about the utility's reference to a different alternative method of estimating usage is irrelevant, since the utility did not use that method (using consumption from a prior comparable period containing a similar number of degree days) and complainant has not asserted it should have used that method. The electric time-of-day procedure on estimated billing is a general statement, which (if specifics relevant only to electric demand billing are eliminated and if, as the utility stated in referring to the guideline, degree-day usage is taken into account in estimating steam service used for space heating) is generally consistent with the estimation method actually used by the utility in complainant's case.

<sup>13</sup> Case 332288, Complaint of Trump Equitable.

<sup>14</sup> Con Edison appealed the 2004 informal review decision, but the case was subsequently settled by the parties and no determination was issued by the Commission.

of a different issue than the 2004 decision, the two informal review decisions were not inconsistent. Moreover, an informal review or hearing decision is not a precedent and is not binding on the Commission or on another informal review or hearing officer, and an informal review or hearing officer who has addressed a given issue in a prior case may reach a different conclusion in a subsequent case, provided an acceptable reason is explained or is evident.<sup>15</sup>

#### CONCLUSION

To assure that all aspects of this case have been properly addressed, the complaint file has been thoroughly reviewed. We determine that, subject to the adjustment required by the informal review officer, the utility properly estimated the two consecutive disputed bills in this case. Consistent with the informal review decision, the utility is directed, within 30 days of the date this determination is issued, to:

1. estimate usage for the January to February 2005 bill based on average usage per degree day of the comparable January to February 2004, 2003, and 2002 periods;
2. pay the resulting refund to complainant, with interest on the adjustment pursuant to the Commission's regulations; and
3. confirm in writing to the Director of the Office of Consumer Services, that these instructions were followed (provide the amount of the refund and interest, and the date on which payment was made).

Complainant's appeal is denied and the informal review decision is upheld.

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<sup>15</sup> For example, factual differences in the subsequent case may support a different decision, or the Commission may have issued a determination (or a statutory provision or regulation may have been adopted) that is contrary to the position taken in the original informal decision.