

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

- CASE 10-G-0527 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Cross Appeals by Apartment Management Associates, LLC, and The Brooklyn Union Gas Company d/b/a National Grid of the Informal Decision Rendered Partly in Favor of Each Party (932768).
- CASE 11-G-0187 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Spillane Parkside Corp. of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005528).
- CASE 11-G-0188 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by McDonald's of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005534).
- CASE 11-G-0189 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Brooklyn PMC, Inc. of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005550).
- CASE 11-G-0190 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Spillane Page Corp. of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005572).
- CASE 11-G-0192 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by PRPKFC Holdings of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005524).

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- CASE 11-G-0193 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by Brooklyn & Avenue V Enterprises of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005538).
- CASE 11-G-0194 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by PRPKFC Holdings of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005520).
- CASE 11-G-0195 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by PRPKFC Holdings of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (005512).
- CASE 11-G-0196 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by 82 Court St. Corp. of the Informal Decision Rendered in Favor of The Brooklyn Union Gas Company d/b/a National Grid (006124).
- CASE 11-G-0178 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by The Brooklyn Union Gas Company d/b/a National Grid of the Informal Decision Rendered in Favor of Ciampa Metropolitan (004986).
- CASE 11-G-0202 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by The Brooklyn Union Gas Company d/b/a National Grid of the Informal Decision Rendered in Favor of Mercy First/Angel Guardian Home (004986).
- CASE 11-G-0206 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by The Brooklyn Union Gas Company d/b/a National Grid of the Informal

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Decision Rendered in Favor of Brooklyn PMC
(008832).

CASE 11-G-0207 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
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Procedures—Appeal by The Brooklyn Union Gas
Company d/b/a National Grid of the Informal
Decision Rendered in Favor of Bay Hylan
Enterprises (005566).

CASE 11-G-0208 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
in 16 NYCRR, in Relation to Complaint
Procedures—Appeal by The Brooklyn Union Gas
Company d/b/a National Grid of the Informal
Decision Rendered in Favor of Bay Hylan
Enterprises (005556).

CASE 11-G-0008 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
in 16 NYCRR, in Relation to Complaint
Procedures—Appeal by KeySpan Gas East
Corporation DBA Brooklyn Union of Long
Island d/b/a National Grid of the Informal
Decision Rendered in Favor of Comsewogue
School District (000352).

CASE 11-G-0009 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
in 16 NYCRR, in Relation to Complaint
Procedures—Appeal by KeySpan Gas East
Corporation DBA Brooklyn Union of Long
Island d/b/a National Grid of the Informal
Decision Rendered in Favor of Pine Hollow
Country Club (000364).

CASE 11-G-0127 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
in 16 NYCRR, in Relation to Complaint
Procedures—Appeal by KeySpan Gas East
Corporation DBA Brooklyn Union of Long
Island d/b/a National Grid of the Informal
Decision Rendered in Favor of Veterans
Products Company (002652).

CASE 11-G-0129 - In the Matter of the Rules and Regulations
of the Public Service Commission, Contained
in 16 NYCRR, in Relation to Complaint
Procedures—Appeal by KeySpan Gas East
Corporation DBA Brooklyn Union of Long
Island d/b/a National Grid of the Informal

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Decision Rendered in Favor of Atherton Franchise (018800).

CASE 11-G-0130 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by KeySpan Gas East Corporation DBA Brooklyn Union of Long Island d/b/a National Grid of the Informal Decision Rendered in Favor of John Frocaro (014458).

CASE 11-G-0132 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by KeySpan Gas East Corporation DBA Brooklyn Union of Long Island d/b/a National Grid of the Informal Decision Rendered in Favor of East Meadow School District (024580).

CASE 11-G-0133 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures—Appeal by KeySpan Gas East Corporation DBA Brooklyn Union of Long Island d/b/a National Grid of the Informal Decision Rendered in Favor of Massapequa School District (020906).

COMMISSION DETERMINATION
(Issued and Effective February 24, 2014)

The Commission has received appeals from separate informal review decisions in 22 cases. Under the circumstances here, consolidation of these cases, which raise similar issues, is appropriate to promote consistent and efficient review.¹

All 22 appeals concern implementation by either The Brooklyn Union Gas Company d/b/a National Grid (Grid-Metro) or KeySpan Gas East Corporation DBA Brooklyn Union of Long Island

¹ Earlier requests for consolidation of some appeals were deferred. The Commission may, in its discretion and on its own initiative, consolidate appeals involving similar issues for decision (requests from a party may be useful but are not necessary).

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d/b/a National Grid (Grid-LI) of virtually identical language included in each utility's tariff for Service Classification (SC) No. 2, since January 2008 (effective for billing cycles after March 1, 2008). SC No. 2 is the basic rate under each of the tariffs for service to non-residential customers. The common language concerns the basis for assignment of non-residential gas customers to a heating or non-heating rate under SC No. 2: for billing cycles after March 1, 2008, customers whose January gas usage was less than twice their July gas usage would be deemed non-heating customers, while all other customers would be deemed heating customers.² Also as of billing cycles after March 1, 2008, the SC No. 2 heating rate became the more expensive of the two rates under both utilities' tariffs.

In each of the 22 appeals, the original complaint asserted that the customer's account(s) had been wrongly assigned by the utility to the more expensive heating rate for one, two or three annual periods (each such period running from approximately March of one year to March of the following year). The first-listed appeal, referred to as Apartment Management,³ involves three separate accounts, while each of the other 21 appeals involves only a single account.

Grid-Metro's implementation of the tariff language is the issue in 15 of the 22 appeals. These 15 appeals (each taken

² Though not stated in the tariffs, the test was to be applied based on January and July usage in the calendar year preceding the 12-month period (starting with the first billing cycle after March 1st) for which these values would determine the rate. See October 10, 2007 Gas Rates Joint Proposal, pp. 12 and 27; see also nn. 27 and 28, below, showing that each utility understood this to be how the tariff would be implemented.

³ Case 10-G-0527, Cross Appeals by Apartment Management Associates, LLC, and The Brooklyn Union Gas Company d/b/a National Grid.

from a separate informal review decision⁴ fall into the following two categories:

- Six appeals by Grid-Metro of individual informal review decisions finding, in effect, that although the utility was entitled to utilize degree day information to determine usage during January, it was not permitted to do so with respect to determining July usage and in these six cases it was the impact of the utility's degree day formula on July usage that disqualified complainant (with respect to the three accounts involved) from the non-heating rate. In the first such case, Apartment Management, both parties cross appeal: complainant appealed (before the utility did) arguing, although the informal review decision required the rebilling sought by complainant, that the review officer incorrectly concluded the utility could properly consider degree day information to determine January - as opposed to July - usage. The remaining five cases, collectively referred to as Grid-Metro/Ciampa, et al.,⁵ involve appeals by the utility from decisions reflecting a similar conclusion; no cross appeals were filed by complainants in those five cases. The complainants in Apartment Management, and in the first-listed of the other five cases, Grid-Metro/Ciampa, are represented by Utility Rate Analysis Consultants (URAC); the remaining four complainants in the cases making up Grid-Metro/Ciampa, et al. are represented by Utility Check Ltd.
- Nine appeals by complainants of separate informal review decisions. These appeals are referred to collectively as Spillane Parkside, et al.⁶ In

⁴ The informal review decisions in these 15 cases were issued on various dates in March, April and May 2011, except for the informal review decision issued September 30, 2010, in Apartment Management.

⁵ These five appeals by the utility are as follows: Cases 11-G-0178, Appeal by Grid-Metro/Ciampa; 11-G-0202, Appeal by Grid-Metro/Mercy First; 11-G-0206, Appeal by Grid-Metro/Brooklyn PMC; 11-G-0207, Appeal by Grid-Metro/Bay Hylan Enterprises; and 11-G-0208, Appeal by Grid-Metro/Bay Hylan Enterprises.

⁶ These nine appeals by customers are as follows: Cases 11-G-0187, Appeal by Spillane Parkside Corp.; 11-G-0188 Appeal by
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these cases, the informal review officer found Grid-Metro properly took into account degree day information which increased January usage over what it would have been based simply on proration of average daily billed usage, and upheld the utility's denial of all requested rebilling. These complainants are represented by Utility Check Ltd.

Grid-LI's implementation of the tariff language is the issue in the remaining seven of the overall twenty-two consolidated appeals. All seven Grid-LI cases (referred to collectively as the Grid-LI appeals⁷) are appeals by that utility from separate informal review decisions finding that it was not entitled to use degree day information (including historical information about past degree days) as a basis for adjusting how much January usage was attributed to the customer when applying the tariff provision. All seven complainants are represented by Utility Check Ltd.

For the reasons discussed in this determination, we conclude that the two utilities failed to properly implement the relevant tariff language.

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McDonald's; 11-G-0189, Appeal by Brooklyn PMC, Inc.; 11-G-0190; Appeal by Spillane Page Corp.; 11-G-0192, Appeal by PRPKFC Holdings; 11-G-0193, Appeal by Brooklyn & Avenue V Enterprises; 11-G-0194, Appeal by PRPKFC Holdings; 11-G-0195, Appeal by PRPKFC Holdings; and 11-G-0196, Appeal by 82 Court St. Corp.

⁷ Grid-LI appeals in Cases 11-G-0008, Appeal by Grid-LI/Comsewogue School District; 11-G-0009, Appeal by Grid-LI/Pine Hollow Country Club; 11-G-0127, Appeal by Grid-LI/Veterans Products Company; 11-G-0129, Appeal by Grid-LI/Atherton Franchise; 11-G-0130, Appeal by Grid-LI/John Frocaro; 11-G-0132, Appeal by Grid-LI/East Meadow School District; 11-G-0133, Appeal by Grid-LI/Massapequa School District. Separate informal review decisions were issued for the Comsewogue and Pine Hollow cases in November 2010, and for the remaining cases in March 2011.

BACKGROUND

1. The tariff provisions.

A. Content of the provisions.

Since January 1, 2008, the Grid-Metro tariff provision at issue, SC No. 2, "General Service (Non-residential)," has stated that the service classification is available for:

Any use of gas by any Customer of gas service for non-residential purposes. ... Non-heating customers will be subject to the rates set forth under Rate Schedule 1; heating customers will be subject to the rates set forth under Rate Schedule 2. For purposes of this Service Classification, customers whose annual load factor is 50% or less as determined by the Company will be deemed heating customers; all others will be deemed non-heating. Effective with billing cycles after March 1, 2008, customers whose January usage is at least two times greater than its July usage will be deemed heating customers; all others will be deemed non-heating.⁸ (Emphasis added.)

Since January 1, 2008, Grid-LI's SC No. 2 tariff has included Special Provision (c), which states:

Effective with billing cycles after March 1, 2008, any customer whose January usage is at least two times greater than their July usage will be deemed space heating; all others will be deemed general service.⁹ (Emphasis added.)

The common tariff language, the proper implementation of which is the issue presented, is underlined above. This determination uses the terms "heating" and "non-heating" to refer to each utility's two sub-classifications of SC No. 2, as well as to the corresponding rates for service, and the customers qualifying for each of them.

⁸ PSC No. 12 Gas-The Brooklyn Union Gas Company, SC No. 2, Applicability Clause, Leaf 159, Revision 8 (effective January 1, 2008 to May 6, 2008) and subsequent revisions to date.

⁹ PSC No. 1 Gas-KeySpan Gas East Corp. DBA Brooklyn Union of L.I., SC No. 2, Special Provision (c), Leaf 123, Revision 1 (effective January 1, 2008, to October 1, 2010), and subsequent revisions to date.

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B. Past tariff language and development of current language.

In the fall of 1997, Grid-Metro's tariff was altered to segment its "general" rate into heating and non-heating service. Following this segmentation and until January 1, 2008, Grid-Metro's heating rate under SC No. 2 was less expensive than its rate for non-heating service (from January 1, to March 1, 2008, the rates were identical).

At the time of the SC No. 2 segmentation in 1997, Grid-Metro also adopted tariff language regarding how to determine which customers qualified for the heating rate. That language - described in the Commission's 2008 determination in Case 07-G-0409, et al.,¹⁰ (Coastal Management) - did not require determining whether the customer had gas space heating equipment. Instead, it made eligibility for the new heating rate dependent on whether the customer's "load factor" was below 50%. A customer with a higher load factor would be served at the more expensive, non-heating rate. However, as stated in the same determination, "[n]o specific method of calculating load factor was considered or approved" by the Commission at that time.¹¹ Grid-Metro's implementation of its tariff provision from fall 1997 through 2007, by means of a series of methodologies (none spelled out in the tariff) for determining rate eligibility based on "load factor," led to many complaints and to two Commission determinations requiring extensive rebilling.¹² (See pages 35-36, below, for further discussion of

¹⁰ Cases 07-G-0409, Appeal by KeySpan of New York of the Informal Decision Rendered in Favor of Coastal Management, and 07-G-0480, Appeal by KeySpan Energy Delivery New York of the Informal Decision in Favor of Cross County Federal Savings Bank, Commission Determination (issued October 21, 2008), p. 2.

¹¹ Id.

¹² The first such determination is the 2008 determination in Coastal Management; the second is a September 23, 2013
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the utility's implementation of its SC No. 2 tariff provision before January 1, 2008.)

Grid-LI, for its part, also established separate rates for non-residential heating (less expensive) and non-heating service (more expensive) in 1998 (less than a year after Grid-Metro did so), but did not, initially, do so by segmenting SC No. 2. Until July 1999, Grid-LI or its predecessors¹³ provided non-residential "building heating" under a separate service classification (No. 6, Commercial Heating Service¹⁴), and during that period, the utility's non-residential gas service under SC No. 2 was limited to "all purposes not provided for in other service classifications."¹⁵ Rates for all LILCO non-residential customers served at SC No. 2 and at SC No. 6 were identical as of the fall of 1997.¹⁶ However, beginning by February 1998, the utility's rate for non-residential heating service under SC No. 6 became less expensive (for quantities in excess of 90 therms) than its water heating and general non-residential

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determination on remand, also in Case 07-G-0409, Appeal by Coastal Management.

¹³ By August 1998, the gas utility known as The Long Island Lighting Company (LILCO) was known as MarketSpan d/b/a The Brooklyn Union Gas Company. Its name was later changed to KeySpan Gas East Corporation D/B/A Brooklyn Union of Long Island, and it was permitted by the Commission (in an order issued June 24, 1999, in Case 99-G-0229), to file its current tariff (PSC No. 1-Gas), in that name, and to cancel its prior tariff (PSC No. 4-Gas) in LILCO's name, effective July 1, 1999.

¹⁴ SC No. 6 served this purpose at least from some time in 1996 (and possibly earlier). See PSC No. 4-Gas, LILCO, 48th Revised Leaf No. 34 (effective July 25, 1996).

¹⁵ See, e.g., PSC No. 4-Gas, 54th Revised Leaf No. 27 (effective November 6, 1997).

¹⁶ See PSC No. 4-Gas, LILCO, 54th Rev. Leaf No. 27 (regarding SC No. 2), and 50th Rev. Leaf No. 34 (regarding SC No. 4), showing identical pricing effective for both types of customers as of November 6, 1997, "in Compliance with Order of the P.S.C. ..., dated October 7, 1997 in Case No. 97-G-0600."

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service under SC No. 2,¹⁷ paralleling the change to Grid-Metro's tariff in the fall of 1997. As of July 1999, Grid-LI ceased using SC No. 6 for its non-residential heating service, and instead created two separate sub-classifications of SC No. 2, consisting of Sub-Classification 2B, heating service (containing a single Rate Code, 170, for Space Heating), and Sub-Classification 2A, non-heating service (containing Rate Codes 250 for General, and 160 for Water Heating, which had formerly been the only rate codes available under SC No. 2). At that time and until January 2008, the heating sub-classification remained the less expensive of the two.¹⁸

Until 2008, no Grid-LI tariff language specified a basis for distinguishing which non-residential customers qualified for Sub-Classification 2B as opposed to 2A.

2. Implementation by each utility of its tariff's SC No. 2 rate assignment provisions applicable to billing cycles after March 1, 2008.

Grid-Metro's and Grid-LI's submissions in response to the complaints resulting in the current appeals illustrate each utility's actual method of implementing its tariff to determine, based on comparison of January and July usage, whether a non-residential customer qualifies for the utility's SC No. 2 heating or non-heating rate.

The tariff language calls for comparison of usage in two calendar months. Because it is rare that meter readings (if

¹⁷ See PSC No. 4-Gas, LILCO, 55th Rev. Leaf No. 27 (regarding SC No. 2) and 51st Rev. Leaf No. 34 (regarding SC No. 6), both effective July 10, 1998, "Issued under Authority of Order of the P.S.C., dated February 5, 1998 in Case No. 97-M-0567").

¹⁸ Compare PSC No. 1-KeySpan Gas East Corp. dba Brooklyn Union of L.I., SC No. 2, Leaf 124, Revision 0 (effective July 1, 1999 to January 1, 2008) regarding SC No. 2 rates for Sub-Classification 2A (Non-Heating), and the same tariff's Leaf 125, Revision 0 (effective July 1, 1999 to January 1, 2008), regarding SC No. 2 rates for Sub-Classification 2B (Heating).

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indeed they are monthly, not bimonthly) encompass only a precise calendar month, proration of usage during the billing period(s) encompassing the January and July calendar months is necessary to apply the tariff provision.

However, after doing such proration, each utility also employs information about both current degree days (relative to the actual calendar month at issue and the encompassing billing period[s]) and so-called "normal" degree days (meaning 30-year average degree days) to assign a level of use to the customer during one or both of the January and July calendar months. Each utility uses a different method, described below.¹⁹

A. Grid-Metro.

First, to compare January and July usage,²⁰ the utility lists, separately for each billing period encompassing the particular calendar month, the number of hundred cubic feet (ccf) of gas used between the bill dates encompassing the respective January and July periods; it then states the number of days in each such period and the number of "DDays" (degree days)²¹ for both the January and July periods. A single set of

¹⁹ Apart from the utilities' responses in the individual complaints, there is no indication of utility explanation of these practices to Staff (either in connection with the 2007 rate case or subsequently) or to customers. See nn. 27 and 28, below, regarding the general notification made available to customers by the utilities.

²⁰ Where a January or July period is split between two different billing periods, the utility does separate calculations, beginning with this step, for each of the two billing periods involved in calculating the January or July usage, and then totals the results.

²¹ The information here and on the next two pages, regarding Grid-Metro's implementation, derives from similar utility responses showing how it billed each customer, which are included in the 15 Grid-Metro case files; formulas are quoted verbatim from those responses. "Degree days" refers to heating degree days. A given number of heating degree days on a particular day represents the number of degrees by which the
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values are then stated for "Base," "Slope,"²² and "30 Yr Dday Avg" (average number of degree days per year over the past 30 years).

Second, using the values referred to immediately above, Grid-Metro does a "Percent Heating Calculation," which produces values for "% Heating" and "% Domestic/Non-Heat" (items d and e below). Those two values are then used to calculate both January and July usage. The "Percent Heating Calculation" requires the following sequence of calculations:

- a. 30 Yr Dday Avg/365 Days
- b. Heating (Slope*Per Day Dday Avg)
- c. Capacity (Base+(Slope*Per Day Dday Avg/365)[sic]
- d. %Heating (Heating/Capacity)
- e. % Domestic/Non-Heat (1-% Heating)

Third, to calculate January usage²³ the utility uses values obtained above to determine "Heating Usage" and "Domestic/Non-Heat Usage":

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average temperature on that day fell below 65 degrees Fahrenheit.

²² The derivation of the figures for base and slope is not explained in the case files. Grid-Metro has indicated on appeal that the basis for its degree day calculation in general is its weather normalization adjustment tariff provision (see p. 20, below). That tariff provision contains no reference to "slope," but does provide an explanation of "base load factor" ("the estimated number of dekatherms used per day for non-heating purposes based on average usage by customers to which this adjustment applies," which is "determined separately for each customer category and may be revised annually to reflect the non-temperature sensitive usage of customers to which the adjustment applies reflected in the prior heating season's sales"). PSC No. 12 Gas-The Brooklyn Union Gas Company, Leaf 82, Revision 11 (effective January 1, 2008 to May 6, 2008) and subsequent effective revisions, to date.

²³ If January is split between two separate billing periods, then steps a and b, listed below, are done separately for the number of ccf and of degree days in each partial January period, and the results for each partial January period are then totaled, as shown in step c, below.

a. Heating Usage

- 1) $CCF\% \text{ Heating}$
- 2) $(CCF\% \text{ Heating}) * Ddays \text{ Jan} / Ddays \text{ Period}$

b. Domestic/Non-Heat Usage

- 1) $CCF\% \text{ Domestic/Non-Heat}$
- 2) $(CCF\% \text{ Domestic/Non-Heat}) * Days \text{ Jan} / Days \text{ Period}$

c. Sum

The results for " $(CCF\% \text{ Heating}) * Ddays \text{ Jan} / Ddays \text{ Period}$ " and " $(CCF\% \text{ Domestic/Non-Heat}) * Days \text{ Jan} / Days \text{ Period}$ " are added (and rounded to a whole number) to obtain "Total January Usage."

To calculate July usage, with respect to each billing period encompassing July usage, the utility lists the amount of usage and the number of heating degree days both for the encompassing period(s) and for the portions of each such period making up July. Where the July period falls within a single billing period, the utility then carries out the same three steps (a, b and c) listed above for January usage, but applies them to July usage.²⁴

To compare the two periods, Grid-Metro divides its January usage figure by its July usage figure. If the result is equal to or exceeds 2, the customer is assigned to the more expensive heating rate (because in this case January usage equals or exceeds twice July usage), but if the result is less than 2, the customer is assigned to the less expensive non-heating rate.

In summary, Grid-Metro's method utilizes, for both January and July periods, 30-year heating degree day averages; it also uses current heating degree days during the overall billing period or periods encompassing the January and July periods, as well as current heating degree days during each

²⁴ If July is split between two separate billing periods, then steps a and b are done for each period encompassing July, and the results for the two periods are then added to obtain to "Total July Usage (Period 1 + Period 2)."

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January and July period, to obtain its usage figures for each period.

An additional characteristic of Grid-Metro's use of heating degree days came to light in an appeal involving that utility's use of summer "heating degree days." By letter to the utility dated January 26, 2011, the informal review officer in Case 11-G-0178, Grid-Metro/Ciampa, questioned the utility's use of five heating degree days from June 15 to August 15, 2007, in calculating July usage, because a utility-provided degree day table showed zero heating degree days during that period. By letter to the informal review officer dated March 3, 2011, the utility responded that:

When our system does the calculation in question it looks at the degree day numbers for 2 days prior to the beginning and end dates of all billing periods involved. This is the reason that the form was set up the way it was and why you are arriving at a different number.

The utility did not provide a revised calculation reflecting the absence of any degree days during the billing period. There is no indication whether the practice of including degree days from two days before and after a given billing period applies to Grid-Metro's calculation of January usage, as well as July usage.

B. Grid-LI.

To calculate January usage, this utility uses two steps.

First:

The utility calculates the average daily number of therms used by the customer during each billing period encompassing part of January, determines the number of days in each period that fall within January, and multiplies the average daily usage in each period by the number of January days within the respective period. The results for each January period are added to obtain the customer's usage in terms of "straight" therms (no use of degree days).

Second:

Grid-LI then multiplies the January usage by a "Normalization Ratio," consisting of "January Normal Degree Days"²⁵ divided by "January Actual Degree Days."²⁶

To calculate July usage, Grid-LI uses only one step, which is identical to its first step with respect to January usage:

It determines the customer's average daily usage in each billing period including any part of July, then multiplies that average daily use by the number of July days included in each respective billing period, and if necessary adds the results to obtain the customer's total July usage in "straight" therms.

To apply the tariff's test, the utility doubles its figure for the July usage and then compares the result to its figure for the January usage. If the utility's January usage less than twice the July usage, the customer is assigned to the less expensive heating rate; if the figure for January usage is

²⁵ January Normal Degree Days are not defined in material submitted in these cases. However, both terms - "Normal Degree Days" and "Actual Degree Days" - are defined in the Grid-LI weather normalization tariff provision, which states: "Normal Degree Days, for any given calendar day within a month are based on the average of degree days for that calendar day over the thirty year period ending June 30, 2006," and "[a]ctual Heating Degree days, are the actual difference between 65 degrees and the average of the minimum and maximum outdoor ... temperatures for a particular day." PSC No. 1 Gas-KeySpan Gas East Corp. dba Brooklyn Union of L.I., General Information, Leaf 78, Revision 3 (effective January 1, 2008).

²⁶ A Grid-LI communication in one case says that the normalization ratio applicable to calculations based on usage during 2007 and 2008 exceeded 1, but the ratio applicable to calculations based on 2009 usage (impacting an SC No. 2 customer's rate assignment for a 12-month period after March 1, 2010) was below 1. A ratio above 1 increased January usage above "straight" usage; a ratio under 1 decreased it. See Case 11-G-0130, Grid-LI/John Frocaro, utility letter to complainant, dated May 3, 2010.

equal to or exceeds twice July usage, the customer is assigned to the more expensive heating rate.

In summary, Grid-LI utilizes both current and historic (30 year) degree day averages to obtain its figure for an SC No. 2 customer's January usage, which is then compared to such a customer's July usage for purposes of determining which SC No. 2 rate applies.

3. Utility notice to customers of the new test.

Following its adoption, each utility provided at least some public notice to its customers of the new test. Grid-Metro did so in its annual "rights and responsibilities" brochure sent to non-residential customers.²⁷ Grid-LI did so in on-line information available to its customers.²⁸ In neither case did the utility indicate that degree day or weather normalization information would be used in performing the new test.

²⁷ See Exhibit B to complainant's June 21, 2010 letter to the informal review officer in Apartment Management (copied to the utility). The relevant language of this brochure indicates it was distributed in 2008; it states that, under the utility's "new rate plan ... effective January 1, 2008," the utility would implement a "new process" for determining whether SC No. 2 customers would be billed on the heating or non-heating rate: "Each March, we will compare your gas use during the months of January and July of the prior year," and if "gas use in January was more than two times ... your gas use in July, your account will be considered heating"

²⁸ See Exhibit 3 to complainant Pine Hollow Country Club's October 13, 2010 letter to the informal review officer (copied to the utility). The on-line information explains that under a five-year rate plan, effective March 1, 2008, accounts billed on SC 2 would be reviewed annually in March by comparing "your gas use during the months of January and July of the prior year," and that if gas use in January "was at least two times ... your gas use in July, your account will be considered heating" and the rate would be changed to heating, if necessary. Grid-LI's information also specifies that if the customer recently opened the account (so that prior billing information for that customer does not exist), billing information for a prior customer for the preceding year - if such information exists - will be reviewed to determine the

(continued)

POINTS ON APPEAL

1. Fifteen Grid-Metro Cases

By letter dated October 15, 2010, in Apartment Management,²⁹ and by five separate submissions during April 2011 in Grid-Metro/Ciampa, et al., Grid-Metro appeals from six separate informal review decisions finding complainants entitled to rebilling for certain periods because the utility improperly used degree day information to determine July usage (the review officer indicated that such a practice was proper with respect to January usage). Complainant in Apartment Management also appeals (by letter dated September 30, 2010), although the review officer granted the requested rebilling, because complainant objects to the informal review officer's conclusion that use of degree day information was improper only in relation to determining July usage, not January usage. Complainants in the Grid-Metro/Ciampa, et al. cases respond to the utility's appeal by submissions filed in April or May 2011.

In nine of the Grid-Metro cases, Spillane Parkside, et al., complainants appeal informal review decisions denying them any rebilling,³⁰ and the utility responds in five of these cases.³¹

(continued)

rate for the first annual period beginning in March of a given year.

²⁹ See also n. 43, below, regarding a letter dated March 31, 2011, to the Secretary from a National Grid attorney, stating its appeal in, and request for consolidation of, all seven Grid-LI cases and Apartment Management (a Grid-Metro case, appealed by the utility earlier).

³⁰ Complainants in the first four of these cases (Cases 11-G-0187, 11-G-0188, 11-G-0189, and 11-G-0190) appeal by letter dated April 14, 2011; complainants in the last five of these cases (11-G-0192, 11-G-0193, 11-G-0194, 11-G-0195, and 11-G-0196) appeal by letter dated May 25, 2011.

³¹ By letter dated June 1, 2011, the utility responded to the second of these appeals; there is no record of a utility response to the first appeal.

A. Complainants' points on appeal or in response to Grid-Metro's appeals.

- 1) Grid-Metro's use of degree day information to determine either January or July usage for purposes of rate assignment under SC No. 2 is improper because the tariff language (and Staff testimony proposing that language in a rate proceeding) calls for use only of "straight" usage.
- 2) Use by Grid-Metro of degree day information to determine whether an SC No. 2 customer qualifies for the heating or non-heating rate is illogical because degree day information is relevant only to billing a customer already determined to be properly assigned to a heating rate, not to determining that a customer should be assigned to a heating rate.
- 3) Use by Grid-Metro of degree day information in determining heating or non-heating rate assignment under SC No. 2, is not required by a utility tariff provision (PSC No. 12 Gas-The Brooklyn Union Gas Company, Leaf No. 37) permitting allocation of usage based on heating degree days in connection with billing customers "[w]henver a delivery rate change or new Monthly Cost of Gas becomes effective during a billing period, unless otherwise specified."³²
- 4) Weather normalization information was not used by Grid-Metro in relation to determining which rate an SC No. 2 customer qualified for prior to March 1, 2008, as shown by descriptions of the various methodologies

³² Complainant's appeal in Apartment Management, and complainants' responses to the utility appeals in Grid-Metro/Ciampa, et al. Other specific assertions by complainants of improprieties or deviations from industry practices on the part of Grid-Metro regarding use of degree days are not identified or discussed; doing so is unnecessary given our conclusions on the points we do discuss.

in the Commission's 2008 determination in Coastal Management and is not relevant to the current cases.

B. Grid-Metro's points on appeal or in response to appeals by complainants.

- 1) The utility is not subject to any "prescribed formula" or other requirement that it rely on "straight" usage in implementing its tariff's test to determine which SC No. 2 customers belong on the heating as opposed to the non-heating rate, rather than a "formula utilizing a degree day factor for purposes of determining a customers' January and July 'usage'"; a method using degree day information "weather-normalize[s] the January and July usage" and prevents customers from "constantly jumping between the heating and non-heating categories based simply on weather."³³
- 2) Failure to use degree day and weather normalization information would not make it "'easier' for customers to determine what class they would be served under," and use of such information is consistent with "the intent of the parties to Case 06-G-1185 to provide a simple method to establish rate eligibility under SC 2."³⁴ The "standard formula used and relied on by the Company to normalize usage for weather" is "readily available to" complainants, being stated in Grid-Metro's tariff, "at Leaf Nos. 80 through 83."³⁵
- 3) These practices, which allocate usage based on degree day information, are also "similar to how a customer's usage is allocated during billing cycles" in other

³³ Grid-Metro's cross appeal in Apartment Management (by letter dated September 30, 2010) pp. 3-4. The utility also made similar arguments in its five appeals in Grid-Metro/Ciampa, et al. (at pp. 2-3 of each appeal).

³⁴ Grid-Metro's cross appeal in Apartment Management, pp. 4-5.

³⁵ Id., p. 7.

instances "required by the tariff" (referring to Leaf No. 37 of the utility's tariff).³⁶ It "logically follows" that "[w]here a customer's usage is allocated by degree days for billing purposes, ... this same methodology would apply whenever the Company is required to determine a customer's usage."³⁷

- 4) As it does in January, the utility properly applies degree day information to July usage to determine how much recorded service was used in that calendar month (as opposed to other parts of the billing period[s] encompassing July) since failure to do so would be inconsistent with the utility's tariff Leaf No. 37.³⁸
- 5) Use of degree day and/or weather normalization information is appropriate without regard to whether a customer uses gas heating equipment since even if a customer does not use gas heat, "[c]ertain customers are temperature sensitive and changes in weather can affect how their equipment is used."³⁹
- 6) In the 2008 Coastal Management determination, the Commission "recognized the possibility that the Company could normalize consumption for purposes of determining [SC No. 2] rate eligibility," and in amending the tariff effective 2008, the Commission "did not abrogate the Company's long-standing practice of normalizing usage for purposes of determining SC 2 rate eligibility," so there "continues to be no validity to ... [complainants'] challenge of ...

³⁶ Id., pp. 4-6.

³⁷ Id., p. 6.

³⁸ Id., pp. 8-9

³⁹ Id., p. 8.

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[Grid-Metro's] use of degree days to determine rate eligibility for SC 2."⁴⁰

2. Seven Grid-LI cases

By letter dated December 27, 2010, Grid-LI appeals in two cases, referred to as Grid-LI/Comsewogue and Pine Hollow.⁴¹

By letter dated March 31, 2011, the utility appeals in five additional cases,⁴² referred to as Grid-LI/Veterans Products, et al.⁴³

A. Grid-LI points on appeal.

The utility makes the following points:

- 1) The review officer wrongly concluded that the tariff language at issue meant that only "straight" usage could be considered in determining which SC No. 2 rate a customer qualified for. In fact, the Commission "did not authorize any particular method for how a particular customer's usage is to be determined for purposes of determining rate eligibility,"⁴⁴ and a

⁴⁰ See p. 3 of each of the separate appeals by Grid-Metro in the five cases referred to as Grid-Metro/Ciampa, et al.

⁴¹ Cases 11-G-0008, Appeal by Grid-LI/Comsewogue School District, and 11-G-0009, Appeal by Grid-LI/Pine Hollow Country Club. The utility's December 27, 2010 letter also sought to consolidate the two cases.

⁴² Cases 11-G-0127, Appeal by Grid-LI/Veterans Products Company; 11-G-0129, Appeal by Grid-LI/Atherton Franchise; 11-G-0130, Appeal by Grid-LI/John Frocaro; 11-G-0132, Appeal by Grid-LI/East Meadow School District; 11-G-0133, Appeal by Grid-LI/Massapequa School District.

⁴³ In its March 31, 2011 letter, Grid-LI sought to consolidate its Grid-LI/Veterans Products, et al. appeals and its Grid-LI/Comsewogue and Pine Hollow appeals. In both its December 27, 2010 and March 31, 2011 letters, the utility also sought consolidation with Grid-Metro's appeal (by letter dated October 15, 2010) in Apartment Management. These letters neither acknowledged that Apartment Management involved a different utility nor explained the reasons for seeking consolidation of Grid-LI's appeals with a case involving a different utility.

⁴⁴ Utility appeal in Grid-LI/Comsewogue and Pine Hollow, p. 3.

customer's actual use or non-use of gas heating equipment has no relevance to rate eligibility.⁴⁵

- 2) Normalization of usage does not apply only to heating customers, since non-heating customers "can also be temperature sensitive and changes in weather can affect how they use their equipment."⁴⁶
- 3) Application of a "straight" usage test would "result in customers constantly jumping between heating and non-heating categories based on weather anomalies that may affect heating and non-heating customers alike," and "[n]eutralizing the effect of weather" prevents this.⁴⁷
- 4) In the 2008 Coastal Management determination, the Commission noted that when the utility first received authorization to segment the SC 2 rate, the Commission recognized the possibility that the Company could normalize consumption for purposes of determining rate eligibility," and the Commission "did not abrogate the Company's long-standing practice of normalizing usage for purposes of determining SC 2 rate eligibility."⁴⁸

B. Complainants' response to Grid-LI appeals:

The relevant complainants first respond by two similar letters dated January 24, 2011, to Grid-LI's appeal in Grid-LI/Comsewogue and Pine Hollow, and then respond by single letter dated April 12, 2011, to Grid-LI's appeal in Grid-LI/Veterans Products, et al. In one or both letters complainants argue that:

- 1) The utility is not free to add usage to the January period based on degree days.

⁴⁵ Utility appeal in Grid-LI/Veterans Products, et al., p. 3.

⁴⁶ Id., pp. 3-4.

⁴⁷ Id., p. 4. Similar language is included in the utility appeal in Grid-LI/Comsewogue and Pine Hollow, p. 3.

⁴⁸ See utility appeal in Grid-LI/Veterans Products, et al., p. 5.

- 2) The 2008 Coastal Management determination is not relevant to Grid-LI because it concerned Grid-Metro, and the two utilities employ different methodologies for determining eligibility for rates under SC No. 2. Moreover, in the 2008 Coastal Management determination, the Commission reviewed the methodologies used by Grid-Metro to assign accounts to its non-heating and heating rates, and those methodologies did not include use of degree day information in determining the customer's winter usage.⁴⁹

DETERMINATION

The basic issue in each case is whether Grid-Metro and Grid-LI have properly implemented language in their respective SC No. 2 tariffs stating, since March 1, 2008, that the less expensive non-heating rate applies if a customer's January usage is less than twice its July usage, but the more expensive heating rate applies if a customer's January usage fails this test. The two utilities have implemented identical tariff language by using formulas - different for each utility, and explained only in response to the complaints now on appeal - that apply information about both current degree days and degree days over the past 30 years (normal degree days) in determining, in Grid-Metro's case, both January and July usage, and in Grid-LI's case, January usage only.⁵⁰

⁴⁹ For the same reasons stated in n. 32 regarding the Grid-Metro cases, we do not identify or discuss other objections by complainants in the Grid-LI cases to utility practices regarding degree days.

⁵⁰ The utilities refer to their implementation methods, variously, as "use of degree day information to determine rate eligibility" under SC No. 2, and "the practice of normalizing usage based on degree days for purposes of determining rate eligibility under SC 2." See Grid-LI appeal letter dated March 31, 2011, in Grid-LI/Veterans Products, et al., p. 2;
(continued)

Complainants argue that the tariff language requires simply a volumetric comparison of January and July usage, and does not authorize use of degree day or weather normalization information. They also argue that there is no basis in other Grid-Metro and Grid-LI tariff provisions on which the utilities also rely (in addition to SC No. 2) for utilizing degree day or weather normalization information in implementing the common SC No. 2 language.

The two utilities analogize their practices to, and seek to justify them on the basis of, two provisions present in both their tariffs: first, a provision for a weather normalization adjustment; and, second, a provision for allocation of usage based on degree days as a method of estimating usage under certain circumstances. They contend that their SC No. 2 tariff provisions, adopted pursuant to the Commission's December 21, 2007 order in Case 06-G-1185, do not state "a prescribed formula" or any "particular method" limiting how a customer's usage is to be determined, and, therefore, they are warranted in adopting practices, allegedly in accord with these other tariff provisions, to employ degree day and/or weather normalization information in calculating January and/or July usage to determine whether an SC No. 2 customer qualifies for the heating or non-heating rate (see pages 20 and 22, and notes 33 and 44, above).

For the following reasons, we conclude that neither utility has properly implemented its tariff with respect to determining which SC No. 2 customers qualify for the heating or non-heating rate.

(continued)
and Grid-Metro letter dated October 15, 2010, cross appealing in Apartment Management, and responding to complainant's appeal in that case, p. 2.

1. The language and intent of the SC No. 2 tariff provision at issue are inconsistent with the utilities' use of degree day or weather normalization information to determine January and/or July usage.

Staff testified in January 2007, during combined rate proceedings for the two utilities, that Grid-Metro originally proposed to merge its separate heating and non-heating rates for SC No. 2 customers because of its problems in distinguishing "small commercial customers who use gas for heating and non-heating purposes."⁵¹ Staff explained that "[t]he commercial heat and non-heat classes should remain separate because heating customers place different load requirements on ... [the utility's] system," and that a better solution to the problem could be achieved by making a change in Grid-Metro's then existing applicability clause (as opposed to eliminating the distinction, as urged by Grid-Metro).⁵²

The then existing applicability clause (dating from 1997) stated:

[SC No. 2] customers whose annual load factor is 50% or less as determined by the Company will be deemed heating customers; all others will be deemed non-heating.⁵³

In connection with the new rate plan, Staff recommended instead, that:

[T]he applicability clause test be changed to state that if a customer's throughput in January is twice that of the customer's throughput in July, or greater, they be served at the heating service class 2-2.⁵⁴

In answer to the question, "Why do you recommend a volumetric test," Staff responded:

⁵¹ Cases 06-M-0878, 06-G-1185, 06-G-1186, Prepared testimony of Aric J. Rider, Office of Gas & Water, Department of Public Service (January 2007), p. 20.

⁵² Id., pp. 21-22.

⁵³ See PSC No. 159-Gas, The Brooklyn Union Gas Company, Leaf 159, Revision 6 (effective October 1, 2001, to January 1, 2008).

⁵⁴ Staff testimony (see n. 51, above), p. 21.

The test would be easier administratively than calculating the load factor for each customer and would ... [make it] easier for customers to determine what class they would be served under.⁵⁵

Staff also recommended changing Grid-Metro's rates so that the "third block and tail block rates for" the non-heating rate would be "set lower than the block rates of SC 2-2," so as to more accurately reflect different "demand requirements placed on the utility's system" by customers served at heating and non-heating rates."⁵⁶ Thus, Staff recommended that the relative cost of the heating and non-heating rates be reversed, with the heating rate becoming the more expensive of the two.

In their October 10, 2007 Gas Rates Joint Proposal, the parties (including Staff of the Department of Public Service and the two utilities) proposed, consistent with Staff's recommendations (in its earlier testimony), that: "Effective with billing cycles after March 1, 2008," each utility "will distinguish" its SC No. 2 heating customers from its SC No. 2 non-heating customers "by determining, based on usage during the previous calendar year, whether the customer's January usage is at least two times greater than the customer's July usage."⁵⁷ The parties also proposed that, during the term of the rate plan each utility would have the right to "propose a different methodology" for making this distinction.⁵⁸ (Neither utility has exercised that right.) The joint proposal was considered at an evidentiary hearing on November 7, 2007, in which the utilities' representative and Staff clarified that the change in the criterion for differentiating between commercial heating and non-heating customers would apply to existing, as well as new,

⁵⁵ Id., pp. 21-22.

⁵⁶ Id., pp. 22-23.

⁵⁷ Cases 06-G-1185 and 06-G-1186, Rates - Grid-Metro and Grid-LI, Gas Rates Joint Proposal (October 10, 2007), pp. 12 and 27.

⁵⁸ Id.

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non-residential customers.⁵⁹ The proposal was approved by the Commission on December 21, 2007, as part of the new rate plans adopted for the two utilities.⁶⁰

As complainants have argued, Staff's testimony describing the proposed test as one based on "through-put," and Staff's confirmation in its testimony that this test was "volumetric," support a conclusion that no other factors were to be considered in deciding the amount of usage occurring in January and in July. Staff's points in its testimony that the test would make it "easier for customers to determine what class they would be served under" and that such a test would be "easier administratively" for the utilities, are consistent with use of a volumetric test, which contrary to the utilities' arguments generally, refers to actual volume of gas used by the customer, without bringing degree days and weather normalization into play.

Staff's testimony, together with the absence of any indication in the tariff that factors other than volume of usage during the specific months were relevant, indicates that use of other factors was improper. As written, there was no basis under the relevant tariff provision for use of degree day or weather normalization information in determining January or July usage and no reason any customer would have anticipated that any such method was in use.

The same reasoning applies with respect to Grid-LI's tariff provision. Before January 1, 2008, that utility had no stated test in its tariff for assigning SC No. 2 customers to the two rates. The test added to Grid-LI's tariff as of January 1, 2008, and effective for billing cycles after March 1,

⁵⁹ Cases 06-G-1185 and 06-G-1186, Rates - Grid-Metro and Grid-LI, Transcript of Evidentiary Hearing (November 7, 2007, 11:00 a.m.), p. 624.

⁶⁰ Id., Order Adopting Gas Rate Plans (issued December 21, 2007), pp. 23-27.

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2008, is identical to that in Grid-Metro's tariff; it was proposed by staff for both utilities, approved (without changes) by the Commission for both, and took effect for both on the same date. Accordingly, the test has the same meaning in Grid-LI's tariff, as it does in Grid-Metro's; and Grid-LI's implementation of that provision by use of degree day or weather normalization information is not, for the reasons explained with respect to Grid-Metro, authorized by the tariff provision. The fact that Grid-LI's method of applying degree day and weather normalization information is simpler than Grid-Metro's, and that Grid-LI applied it only to the January period (not to July), does not make Grid-LI's implementation of the test for assigning customers to the heating or non-heating rates of its SC No. 2 tariff any more appropriate than Grid-Metro's.

2. Neither utility's weather normalization tariff authorizes it to employ degree day or weather normalization information (current or historic) in determining whether an SC No. 2 customer qualifies for the heating or non-heating rate.

The formula employed by Grid-Metro in implementing its SC No. 2 tariff provision regarding the determination of January usage appears to be based on the method used in calculating weather normalization adjustments to heating customers' billing from October 1st through May 31st. Grid-Metro's tariff provision regarding such adjustments states:

Beginning January 1, 2008, the Weather Normalization Adjustment, calculated as described below, shall be effective for all customers in Service Classification Nos. 1B, 1B1, 1BR, 1B-DG, 2 (Rate Schedule 2), 3, and 4B as well as customers in Service Classification No. 17 (Rate Schedules CTS-1B, CTS-1B1, CTS-1BR, CTS-2 (Rate Schedule 2), CTS-3 and CTS-4B) and shall be applied to total gas usage during the period January 1, 2008 through May 31, 2008 (weather normalization period). For each year thereafter, the

weather normalization period shall be October 1st through May 31st.⁶¹

The above Grid-Metro tariff provision specifies the particular service classifications (or particular sub-classifications or rates within a service classification) to which the adjustment applies. The affected service classifications, sub-classifications, or rates are all ones that provide heating service.⁶² The rates subject to such an adjustment specifically include Rate Schedule 2 of SC No. 2, which applies to customers determined - based on the SC No. 2 tariff provision's test - to be heating customers.⁶³ The weather normalization adjustment does not apply to SC No. 2 non-heating customers.

Thus, SC No. 2 customers of Grid-Metro qualifying for the SC No. 2 heating rate are subject to billing at rates that, during the October 1st to May 31st weather normalization period, include the weather normalization adjustment. However, nothing

⁶¹ PSC No. 12 Gas-The Brooklyn Union Gas Company, General Information, 37. Weather Normalization Adjustment, 18th Revised Leaf No. 80 (effective January 1, 2008).

⁶² SC No. 1B is Residential Heating Service; SC No. 1B1 is 3-5 Family Residential Heating Conversion Service; SC No. 1BR is Residential Heating Reduced Rate Service; SC No. 1B-DG is Residential Heating Distributed Generation; SC No. 2 (Rate Schedule 2) is the heating rate of SC No. 2, General Service (Non-Residential); SC No. 3 is Heating and/or Water Heating Service (Multi-Family Buildings), which is supplied at a single rate without differentiation of heating from water heating service; SC No. 4B is Year-Round Air Conditioning Service (Non-Residential), which is available only to non-residential customers using gas "for the heating and cooling in common of the consumer's premises [or a portion thereof]" (see PSC No. 12-Gas, SC No. 4B, Applicability Clause, Leaf 171, Revision 8 [effective January 1, 2008] and subsequent revisions to date). The various Rate Schedules referred to under SC No. 17 (Core Transportation and Swing Service) are rates for equivalent heating service for transportation customers meeting the specific requirements of SC No. 17.

⁶³ See quotation from Grid-Metro's SC No. 2 tariff, p. 8, above.

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in Grid-Metro's weather normalization adjustment tariff provision indicates that the provision authorizes use of degree days or weather normalization information in applying Grid-Metro's test under its SC No. 2 tariff for assigning customers to that classification's heating or heating or non-heating rate.

Grid-Metro's tariff does include a number of explicit provisions, contained in and applicable to specified service classifications or to specified riders, calling for use of "weather normalized usage" in determining whether a particular rate applies.⁶⁴ The absence of such language in Grid-Metro's SC No. 2 tariff provision effectively rebuts the utility's argument that weather normalization or degree day information was intended to be employed in applying that provision's test for assigning customers to the heating or non-heating rate.

Grid-LI's tariff provision, which guides the use of its weather normalization adjustment, states that:

The rates for gas service to all space heating customers under Service Classifications Nos. 1, 2, 3, 5 and 16 shall be subject to a Weather Normalization Adjustment ... to reflect the impact of degree day variations from normal levels, as determined on a revenue month basis, for the months of October through May, inclusive.⁶⁵

Thus, Grid-LI's weather normalization adjustment provision, like Grid-Metro's, explicitly applies to the billing of heating customers, including heating customers served at SC No. 2. Grid-LI's weather normalization provision, like Grid-Metro's, also contains nothing indicating that the utility may

⁶⁴ See, e.g., PSC No. 12 Gas-The Brooklyn Union Gas Company, SC No. 6C, Applicability Clause, Leaf 196, Revision 1 (effective October 1, 1998); Id., SC No. 6G, Applicability Clause, Leaf 206, Revision 1 (effective October 1, 1998); Id., SC No. 6M, Applicability Clause, Leaf 216, Revision 2 (effective August 1, 2005).

⁶⁵ PSC No. 1 Gas-KeySpan Gas East Corp. dba Brooklyn Union of L.I., General Information, III.A.4., Leaf 78, Revision 3 (effective January 1, 2008).

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use weather normalized usage or degree days (whether current or historic) to determine which customers billed at SC No. 2 qualify for the heating or the non-heating rate based on comparison of January usage to twice the customer's July usage. Moreover, Grid-LI's tariff includes language explicitly permitting weather normalized usage to be employed as a factor in determining a customer's eligibility for a particular rate.⁶⁶ The absence of any such language in Grid-LI's SC No. 2 tariff provision rebuts the utility's position that weather normalization and degree day information were intended (or permitted) to be employed in implementing the comparison between January and July billing in assigning SC No. 2 customers to the classification's heating or non-heating rate.

Finally, we note that the Commission's December 21, 2007 order approving the Grid-Metro and Grid-LI tariff provisions for distinguishing between SC No. 2 heating and non-heating customers also addressed the content of the weather normalization adjustment provisions of both utilities' tariffs. That order specifies that "the purposes of a weather normalization clause" are to:

(1) recover from customers some or all of the margins lost on weather sensitive sales (such as heating sales) that are forecast but do not take place because of warmer than average temperatures; and (2) pass back to customers some or all of the margins gained on weather sensitive sales in excess of forecasts because of colder than average temperatures.⁶⁷

⁶⁶ See PSC No. 1 Gas-KeySpan Gas East Corp. dba Brooklyn Union of L.I., General Information, III. 6. Rider-Business Incentive Rate, Leaf 79.1, Revision 1 (effective September 30, 2001 to September 30, 2007) and subsequent revisions, through currently effective (as of January 2, 2012) Revision 4.

⁶⁷ Cases 06-G-1185 and 06-G-1186, Rates-Brooklyn Union Gas and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, Order Adopting Rate Plans (issued December 21, 2007), p. 44.

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Thus, the purposes of the two utilities' weather normalization tariff provision do not include - absent specific language to that effect - use of formulas modeled on aspects of weather normalization adjustment provisions as a means of determining qualification for a particular rate.

3. Tariff provisions permitting the two utilities to estimate gas usage based on current degree days in billing customers under specific circumstances do not authorize utility use of degree day or weather normalization information in assigning SC No. 2 customers to the heating or non-heating rate.

In the Grid-Metro cases, the utility argues that the following tariff provision (referred to as the Determination of Charge Provision) supports its use of degree day or weather normalization information in determining which customers qualify for the SC No. 2 heating or non-heating rate:

Whenever a delivery rate change or new Monthly Cost of Gas becomes effective during a billing period, unless otherwise specified, the Company will allocate the customer's natural gas based on the number of heating degree days in each month covered in the bill, and then calculate the bill by applying that allocation to the rates in effect for each specific month.⁶⁸

The Determination of Charge Provision was approved for inclusion in Grid-Metro's tariff by Commission order, issued October 27, 2004, in Case 04-G-0642 (regarding Grid-Metro's petition for "New Procedures for Estimating and Prorating Consumption Based on Degree Day Occurrence in Calculating Bills"). Some months later, Grid-LI also amended its tariff to adopt the same language.⁶⁹

The Determination of Charge Provision applies for the purpose of calculating bills only under limited circumstances -

⁶⁸ PSC No. 12 Gas-The Brooklyn Union Company, General Information, 16. Determination of Charge, Leaf 37, Revision 2 (effective December 17, 2004).

⁶⁹ PSC No. 1 Gas-KeySpan Gas East Corp. dba Brooklyn Union of L.I., General Information, II.3.B.2. Prorating of Bills, Leaf 36, Revision 1 (effective June 1, 2005).

"[w]henever a delivery rate change or new Monthly Cost of Gas becomes effective during a billing period, unless otherwise specified" - and, if those circumstances apply, it permits use only of current, not normal degree days.

In contrast, the practice at issue in the current appeals (how the two utilities determine whether a customer qualifies for the SC No. 2 heating or non-heating rate) does not constitute bill calculation; and the current appeals do not present the circumstances that, under the Determination of Charge Provision, allow use of current degree days in calculating bills ("a delivery rate change or New Monthly Cost of Gas" becoming effective during a billing period). Moreover the practice at issue involves use, not just of current degree days, but also of normal degree days. Therefore, the Determination of Charge Provision provides no support for Grid-Metro's and Grid-LI's position that they may use both current and normal degree day information in assigning SC No. 2 customers to the heating or non-heating rate.

4. Grid-Metro's past implementation of its pre-January 2008 distinction between SC No. 2 heating and non-heating rates fails to support use of degree day or weather normalization information in determining the rate assignment of an SC No. 2 customer under the tariff language added January 1, 2008.

Both utilities claim their current practice in implementing the test added to their tariffs on January 1, 2008, for assigning SC No. 2 customers to either a heating or non-heating rate is supported by Grid-Metro's earlier practices, under its SC No. 2 tariff prior to January 1, 2008, in assigning customers to that classification's heating or non-heating rate. Referring to Grid-Metro's SC No. 2 tariff provision in effect from fall 1997 to January 1, 2008, the utilities argue that Grid-Metro has "a long-standing practice" of using weather normalization information as a basis for determining whether an

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SC No. 2 customer qualifies for its heating or non-heating rate, which they assert was not "abrogate[d]" by the tariff change.⁷⁰

Grid-Metro's tariff language on how to assign SC No. 2 customers to the heating or non-heating rate prior to March 1, 2008 (when the heating rate was the less expensive of the two), did not include any reference to "weather normalized usage"; rather the tariff made Grid-Metro's assignment to the heating or non-heating rate dependent on whether an SC No. 2 customer's "annual load factor is 50% or less as determined by the Company"; customers with a load factor of 50% or less were "deemed heating customers," while "all others ... [were] deemed non-heating."⁷¹ As stated in the 2008 Determination in Coastal Management (at page 2), regarding how the utility was to distinguish SC No. 2 heating and non-heating customers prior to March 1, 2008, "[n]o specific method of calculating load factor was considered or approved [by the Commission]." While a tariff transmittal letter dated May 30, 1997, did state that Grid-Metro would utilize "weather normalized" usage in determining whether a customer qualified for the SC No. 2 heating or non-heating rate, the test actually used by the utility from 1997 to at least 2002 did not utilize degree day or weather normalization information in any way. There was no indication in the record of the Coastal Management proceeding that weather normalization

⁷⁰ See Grid-LI's "Appeal and Motion to Consolidate Proceedings of KeySpan Gas East Corporation d/b/a National Grid," dated March 31, 2011, in the seven Grid-LI cases and in Apartment Management, p. 5; and see Grid-Metro's five separate appeals (each at p. 3) filed in April 2011 in Grid-Metro/Ciampa, et al.

⁷¹ See Brooklyn Union Gas-PSC No. 12, Leaf 159, Revision 6 (effective October 1, 2001 to January 1, 2008). At the time of the segmentation of SC No. 2 and until January 1, 2008, the heating rate was less expensive than the non-heating rate.

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played a role in methodologies used after 2002 to implement that earlier tariff language.⁷²

We see no basis for any claim that the troubled implementation of Grid-Metro's earlier (pre-2008) tariff provision on determining heating or non-heating rate assignment under SC No. 2 justifies use by either Grid-Metro or Grid-LI of degree day or weather normalization information in determining rate assignment under each utility's current SC No. 2 tariff provision in effect since March 1, 2008.

5. The utilities' remaining arguments fail to support their practices since March 1, 2008, for assigning SC No. 2 customers to heating or non-heating rates.

A. Claimed simplicity of utility implementation practices.

Grid-Metro asserts that its use of degree day or weather normalization information was consistent with the intent that the test adopted "provide a simple method" of assigning rates under SC No. 2, and that foregoing use of such information would not make it "easier" for customers to understand what rate they would be placed on (see page 20, above).

However, neither utility gave notice to its customers or to Staff (except in responses to the complaints now before us on appeal) of the use made by each utility of degree day or weather normalization information. Thus, both Grid-Metro's method of determining January and July usage and Grid-LI's method of determining January usage could only have made it more difficult for certain customers (those for whom the result was that they were assigned to a different rate than they would have

⁷² Moreover, the Commission concluded in the 2008 Coastal Management determination that, apart from "asserting its right to change its method, the utility has not explained why the new computations ... [it introduced in or after 2002 for determining which customers did or did not qualify for the heating rate] are superior to—or even as good as—the method it adopted and used in 1997 and subsequently to compute load factor." Id., p. 10.

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been based on "straight" usage) to determine what rate they would be assigned to.

Grid-Metro also suggests that it was not difficult for affected customers to understand its formula for taking degree days into account with respect to both January and July usage, because the formula, allegedly, was in its weather normalization adjustment tariff. However, that argument is wrong, since nothing in Grid-Metro's (or in Grid-LI's) tariff established that any such formula was to be used for purposes of determining whether customers should be assigned to the SC No. 2 heating or non-heating rate, and, as stated above, no notice was giving to either customers or staff of the utility's use of degree day information.⁷³

- B. Claim that a Grid-Metro customer could not qualify for the non-heating rate as of March 2008, if it began taking service too late in 2007 to have usage in January 2007.

Brooklyn & Avenue V Enterprises, the customer in Case 11-G-0193, began receiving SC No. 2 gas service in April 2007. In response to the customer's November 2007 request for transfer to the SC No. 2 heating rate under Grid-Metro's earlier test then in effect, the utility agreed to transfer the customer to the heating rate as of initiation of service on April 27, 2007. The heating rate was less expensive until January 1, 2008, when the price of the two rates became equal; effective March 1, 2008, the heating rate became the more expensive rate, and assignment to the heating or non-heating rate was to be made based on the test this determination concerns.

⁷³ Apart from the basic lack of authorization, and the complexity of Grid-Metro's formulas, that utility's reliance on heating degree days in relation to July usage is puzzling. Even more obscure is Grid-Metro's practice (see p. 15, above) of including in its count of degree days within the billing period(s) encompassing July usage, degree days falling within the two days before and after any such billing period. The utility has never clarified whether it applies this practice to both January and July, or only to July.

The utility, in response to a new complaint, made July 2, 2009, refused the customer's request for a transfer to the non-heating rate, as of the billing cycle after March 1, 2008, based on the new test effective that date. The utility argued that because the customer took service in April 2007, no January 2007 usage existed to compare to July 2007 usage in order to determine the correct rate under the new test. The prior customer at the same location did receive gas service in January 2007 and had that customer's usage been taken into account, complainant would qualify for the non-heating rate for cycles after March 1, 2008, to March 2009.

Since there is no assertion or documentation by the utility that complainant did not take over the premises and existing gas equipment for purposes similar to those of the prior customer, it appears that the prior customer's usage should have been used. The rate complainant was on until March 1, 2008, was irrelevant given the requirement of the tariff to apply the new test to billing cycles after March 1, 2008.⁷⁴

C. Remaining utility arguments.

The utilities assert that use of degree day or weather normalization information was appropriate in order to prevent customers from "constantly jumping between heating and non-heating categories based on weather anomalies that may affect heating and non-heating customers alike," and that "neutralizing

⁷⁴ It appears that to determine whether complainant qualified for the heating rate prior to January 1, 2008, the utility would have had to consult prior usage of the former customer (the non-heating rate was the default rate when the rate was first segmented in 1997). We note that Grid-LI indicates that where a customer has no prior usage of its own, that utility relies on usage of the prior customer at the premises for purpose of assigning customers to the proper SC No. 2 rate under the tariff provision in effect since March 1, 2008 (see n. 28, above).

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the effect of weather" or "weather ... [normalizing] the January and July usage" prevents this (see pages 20 and 23, and notes 33 and 47, above). They also argue that use of such information is appropriate because even if a customer does not use gas for heating purposes, "[c]ertain customers are temperature sensitive and changes in weather can affect how their equipment is used" (see pages 21 and 23, and notes 38 and 46, above). These assertions are unsupported and, given our conclusions here, irrelevant.

CONCLUSION

To assure that all aspects of this case have been properly addressed, the complaint files have been thoroughly reviewed. We determine that, for purposes of performing the gas usage comparison necessary for assigning SC No. 2 customers (after March 1, 2008) to the heating or non-heating rate of that classification (a process that is carried out for each SC No. 2 customer in March of each year), Grid-Metro and Grid-LI are not authorized by their tariffs to utilize degree day or weather normalization information to alter the volume of usage during the January and July calendar months. Rather, each utility's calculations to implement the relevant tariff language were and are to be based only on proration of average daily usage during the billing period(s) encompassing the January and July calendar months.

For complainants in this case, the calculations to determine eligibility of their accounts for the heating or non-heating rate of each utility's Service Classification No. 2 have been reviewed for each disputed period.⁷⁵ Appendices A (Grid-

⁷⁵ The review was based on utility-provided information except for one period in one case (Grid-LI's appeal in Case 11-G-0130, John Frocaro); in that case, January and July 2008 usage was reviewed based on customer-provided information because the utility did not provide information to show its basis for
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Metro) and B (Grid-LI) show whether, based on the proper test, each account qualifies for rebilling at the non-heating rate for the disputed period or periods.

This determination also means that both utilities must properly implement the tariff provision going forward, and we expect that both will do so in determining rate assignments for SC No. 2 customers for billing cycles after March 1, 2014.

We direct as follows:

1. As soon as possible, and in advance of making refunds required by this determination, Grid-Metro and Grid-LI are to:

- contact complainants' representatives 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 (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' representatives should respond promptly.

2. Within 30 days of the date this determination is issued, Grid-Metro (for each account shown in Appendix A to qualify for rebilling at the non-heating rate for a specified disputed period) and Grid-LI (for each account shown in Appendix B to qualify for rebilling at the non-heating rate for a specified disputed period) are to:

- A. Make refunds (including interest, as required by 16 NYCRR Part 277) to the specified complainants for each specified period.

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billing the account on the heating rate for the 12-month period starting after March 1, 2009.

B. Inform the Secretary to the Commission 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, 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.

Regarding the fifteen Grid-Metro cases: The cross appeals by Grid Metro and complainant Apartment Management in Case 10-G-0527 are granted in part and denied in part; the reasoning of the informal review decision is modified, and the results reached in that decision (directions for rebilling) are upheld in part and reversed in part. Five appeals by Grid-Metro - in Cases 11-G-0178, Grid-Metro/Ciampa; 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 Hylan - are denied; the relevant informal review decisions are modified (as to their reasoning) and upheld as to their direction that specified accounts be rebilled at the non-heating rate for particular periods. Four appeals by complainants - in 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 - are granted in full or in part; the reasoning of the informal review decisions is

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modified, and the results reached by the informal review officer in those decisions are reversed in full or part to require rebilling at the non-heating rate for some or all disputed periods. Five appeals by complainants - in 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) - are denied; the results reached by the review officer are upheld because (though the reasoning of the relevant informal review decisions was not correct) the relevant accounts would not have qualified for rebilling on the non-heating rate for any disputed period even if the proper method of calculating usage for the January and July periods had been used.

Regarding the seven Grid-LI appeals: Five such appeals - 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) - are denied, and the relevant informal review decisions are upheld. The remaining two Grid-LI appeals - in Cases 11-G-0129, Grid-LI/Atherton Franchise; and 11-G-0133, Grid-LI/Massapequa School District - are granted in part and denied in part; the informal review decisions are upheld as to their reasoning, but modified as to their results (because when the proper test is applied, not all periods for which rebilling at the non-heating rate was requested qualify).