


Utility Rate Analysis Consultants (URAC)

156 Scranton Avenue
Lynbrook, NY 11563

(516) 536-4545 fax (516) 594-9413
email: DDiCeglio@UracCorp.com

March 7, 2011

Ms. Jaclyn Brillling, Secretary
State of New York
Department of Public Service
3 Empire State Plaza
Albany, NY 12223

Re: The Boulevard Condo v. Consolidated Edison Company
119-49 Union Tpke. PLPM

PSC Case 008678

Dear Ms. Brillling:

Please be advised that complainant appeals herein from the partially adverse informal determination rendered on March 1, 2011 and requests that the Commission modify the decision or take whatever action it deems appropriate under the circumstances of this case.

BACKGROUND

The background of this case is well documented within the case file and therefore it will not be reiterated herein.

INFORMAL HEARING OFFICERS ERRORS OF FACT AND LAW

After explaining both complainants position and the utilities position the Informal Hearing Officer (IHO) concluded on page 9 that:

While there may or may not have been a problem with the meter before it was exchanged, there is documentary evidence of demand readings being rejected as falling outside of the account's normal billing parameters as well as billing disputes being raised on two occasions. In responding to the 2007 billing inquiries, the company's customer service representative, relying solely on the account's recent billing history, presumably assured the customer that the bills represented a normal pattern of energy use and that inspecting or testing the company's meter was not warranted. This may have seemed a reasonable response, but further scrutiny indicates a more comprehensive investigation should have been initiated in response to the customer's 2007 inquiries. The information that the meter had not been tested in 16 years was readily available to any company representative discussing billing with the customer in 2007. In order to fairly investigate

claims of overbilling of accounts subject to monthly peak demand charges, utility companies reasonably can be expected to educate their customer service representatives as to the importance of assuring its meters are indeed accurate.

The following is a compar[ison] of the customer's January 26, 2006 billing to its January 25, 2007 billing:

<u>Bill "To Date"</u>	<u>Total kWhrs</u>	<u>Peak Demand</u>	<u>Load Factor</u>
January 26, 2006	44,700	72.0 kW	76%
January 25,2007	41,700	213.0 kW	23%

During the May 2007 inquiry, a cursory review of the customer's billing during the similar billing period of the prior year would have revealed the company's billing computer estimated the customer's peak demand to be 99 kW compared to 378kW represented by the demand meter reading reported on May 24, 2007.

Given the fact that, since the replacement of the meter in question, the customer's measured peak demand has not exceeded 120 kW, complainant is entitled to some remedy for the company's failure to test its meter in response to its 2007 high bill inquiries.

The IHO clearly found that the evidence revealed metering problems and more importantly that Con Edison was negligent in not properly responding to internal error messages and complainant inquiries. However, contrary to this finding he directed a remedy which was inconsistent with the remedy applied by the Commission in a similar case (Selfridge Tenants, Inc v. Con Edison, November 15, 1995) and therefore committed an error of law. "Capricious action in legal sense is established when administrative agency on identical facts decides differently." (Italian Sons and Daughter's of America, Inc. v. Common Council of Buffalo, City of Buffalo, 1982, 89 A.D.2d 822,453 N.Y.S.2d 962)

SELFRIDGE CASE APPLIES

Complainant pointed out, during the informal review, that the circumstances of the Selfridge case are almost identical to the circumstances in this case warranting the same remedy.¹ The IHO summarily dismissed the importance of the Selfridge case by accepting Con Edison's argument that:

the company properly points that the delay in specifically challenging the measurement of peak demand, denied it the opportunity to conduct testing necessary to determine if meter malfunction was, in fact, a factor in the bills issued to the customer. (p.9)

We contend that by concluding the customer is responsible for specifically indentifying the component of the bill that is in error, the IHO has improperly shifted this responsibility from the utility to the consumer. There is no basis in law, the tariff, or the rules and regulations or even common sense that requires a consumer challenging its billing to specifically identify the error contained in the bill. They merely have to make the complaint that the charges are high and the onus is on the utility to check every aspect of the billing to make sure it is correct . As clearly documented in the case file there were multiple internal error messages and consumer complaints all of which were not properly handled by Con Edison personnel.

PSC CASE 95-G-1006 DOES NOT APPLY

The IHO relies on PSC Case 95-G-1006 Marilyn Sullivan v. Long Island Lighting Company, November 13, 1997, to direct Con Edison to resolve this matter by reducing the disputed charges by five percent (5%). The case on which the IHO relies can not be further from the facts of this case. In the Determination of that case the Commission found:

The billing history, the meter test result, and the consistency in usage fully support the conclusion that the complainant was properly billed. (p.2)

¹ Complainant also provided numerous other cases where refunds were given under similar or identical circumstances.

In the case at hand the billing history is not consistent, the meter was not tested, and the usage does not "fully support the conclusion that the complainant was properly billed".

The Commission directed the five percent (5%) fast meter allowance because:

...the meter was not tagged for a PSC inspection, and the Commission was not afforded the opportunity to test the gas meter, as it should have been in this case (p.3)

There are absolutely no similarities between the cases.

SUMMATION

The IHO properly found, based on the facts of this specific case, that Con Edison was negligent in not properly responding to the internal error messages and the consumer complaints which in turn caused the erroneous billing to continue until it was corrected by other factors (i.e. standard meter replacement policy). However, he then improperly found that complainant had the responsibility of specifying the exact problem and relied on that theory to apply a PSC Determination that can not be farther from the facts of this case.

The IHO's decision should be modified to adjust the demands in dispute to reflect load factors from similar periods either before or after the problem existed. Interest is applicable to any overpayments in accordance with the interest regulations.

We await the Commission's Determination in this matter.

Sincerely,

Douglas DiCeglio

Douglas DiCeglio
President

DDC:wp

C: Richard Beale