

# *Utility Rate Analysis Consultants (URAC)*

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September 25, 2009

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

Re: Petition for Rehearing in the matter of:  
Tower West Inc., v. Consolidated Edison Company  
PSC Case 07-S-0493, September 21, 2009

Dear Secretary Brillling:

Please be advised that complainant requests a rehearing based upon an error of law in the determination of the Commission rendered September 21, 2009 in the above referenced proceeding.

In accordance with 16 NYCRR 3.7 twenty-five copies are supposed to accompany this petition but it is our understanding that the Commission is now accepting only five copies. Naturally a copy is being sent to the utility via United States Postal Service.

## **POSITION FOR REHEARING**

Without reiterating the entire decision the basic finding was that:

**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. (Determination p.9)**

Based on this conclusion the Commission found that March 2005 was billed accurately and that the February 2005 bill should be corrected by:

**Estimat[ing] 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. (Determination p.11)**

While we remain adamant that using the prior three year periods as the basis for the estimate is not the best alternative, the determination as it stands, is inconsistent for other reasons, with the logic contained therein, and the determination rendered in PSC Case 06-S-0296 (Trump Parc Condo vs. Con Ed, September 21, 2009). As such it is arbitrary and capricious and therefore a violation of the law.

**CONSISTENCY REQUIRES THAT THE BASE USE BE REMOVED BEFORE DEGREE  
DAYS ARE APPLIED**

As the Commission correctly found in Trump Parc Condo vs. Con Edison, (PSC Case 06-S-0296, September 21, 2009):

**Complainant is correct that the informal review officer inappropriately relied on comparisons of its usage relative to cooling degrees. Such comparisons were irrelevant here because the only use complainant made of the steam during the warm weather periods was for water heating, and such usage does not vary with outdoor temperatures. (p.7)<sup>1</sup>**

The Commission further found in the instant case, referring back to the Trump Parc Condo case, under foot note 11 on page 12 that:

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<sup>1</sup> While the Commission is referring to cooling degree days the theory of cooling and heating degree days as it applies to the usage is the same.

**Since temperature-sensitive service was not involved in that case, the estimate did not rely on usage per degree day.**

Complainant contends that in order to be consistent with the rulings and more importantly the fact that base use is not “temperature-sensitive”; the base use must be removed before the degree days are applied. As the determination currently stands degree days will be applied to the total use (base + heating) thereby creating inconsistent rulings on the same subject matter.

**MATHEMATICAL CALCULATIONS**

To further support our position, below is a breakdown of the billing periods wherein the base use is removed before applying degree day information to the heating use.<sup>2</sup> As these figures reveal both periods (February and March 2005) require a rebilling.

| AVERAGE BASE USAGE |      |      |           |
|--------------------|------|------|-----------|
| Date               | Days | MLbs | Avg/Daily |
| 07/22/02           | 33   | 297  | 9.000     |
| 07/22/03           | 33   | 376  | 11.394    |
| 07/21/04           | 30   | 339  | 11.300    |
| Average            |      |      | 10.565    |

| As Billed Information    |           |            |          |             | Segregated Base and Heating Use Information |             |          |             |
|--------------------------|-----------|------------|----------|-------------|---|-------------|----------|-------------|
| Date                     | Days      | DD         | Code     | Mlbs        | Base Use                                    | Heating Use | H-Use/DD | Total Use   |
| <b>Comparison Period</b> |           |            |          |             |   |             |          |             |
| 02/19/02                 | 28        | 647        |          | 2008        | 296   | 1712        | 2.646    | 2008        |
| 02/19/03                 | 28        | 1068       |          | 2639        | 296   | 2343        | 2.194    | 2639        |
| 02/19/04                 | 29        | 1066       |          | 2463        | 306   | 2157        | 2.023    | 2463        |
| <b>Disputed Period</b>   |           |            |          |             |   |             |          |             |
| <b>02/18/05</b>          | <b>28</b> | <b>897</b> | <b>E</b> | <b>2419</b> | 296   | 2052        | 2.288    | <b>2348</b> |

<sup>2</sup> Complainant used the same three year period as ordered by the Commission for these calculations.

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| Comparison Period |           |            |          |             |     |      |       |             |
|-------------------|-----------|------------|----------|-------------|-----|------|-------|-------------|
| 03/20/02          | 29        | 610        |          | 1646        | 306 | 1340 | 2.197 | 1646        |
| 03/20/03          | 29        | 828        |          | 2330        | 306 | 2024 | 2.444 | 2330        |
| 03/22/04          | 32        | 755        |          | 2028        | 338 | 1690 | 2.238 | 2028        |
|                   |           |            |          |             |     |      |       |             |
| Disputed Period   |           |            |          |             |     |      |       |             |
| <b>03/22/05</b>   | <b>32</b> | <b>966</b> | <b>E</b> | <b>2638</b> | 338 | 2215 | 2.293 | <b>2553</b> |

### SUMMATION

Complainant has requested this rehearing because the basic principle (i.e. base use is not affected by degree days) has not been followed in the determination. Determinations by the Commission are considered arbitrary and capricious unless consistent and based on sound reasoning. As explained herein the decision is not consistent and based on sound reasoning because it allows non temperature-sensitive use (i.e base use) to be included in the degree day calculations.

We request that the Commission modify its determination and direct Con Edison to correct the billing as mentioned above. Interest should be applied to any adjustments in accordance with the interest regulations.

Sincerely,

Douglas DiCeglio  
President

DDC:wp

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