

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 94-E-0108 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures --Appeal by Consolidated Edison Company of New York, Inc. of the Informal Decision Rendered in Favor of Presbyterian Hospital, filed in C 26358 (451261)

COMMISSION DETERMINATION
(Issued and Effective September 18, 1996)

This is an appeal by Consolidated Edison Company of New York, Inc. ("Con Edison" or the utility) of an informal review decision (copy attached) dated December 27, 1993, which found that Presbyterian Hospital (or complainant)¹ qualified for demand billing on Service Classification No. 9, General - Large, (SC-9) in the period beginning with the installation of a demand meter on January 14, 1985 to November 8, 1985, before complainant was actually transferred to SC-9.² Prior to November 9, 1985,

¹ Complainant is represented in this matter by Urac Corporation (or Urac), a utility consulting firm.

² Con Edison's SC-2 tariff requires the installation of a demand meter when a non-residential customer's monthly recorded energy use exceeds 3,000 kilowatthours (kwh) in two consecutive months or 6,000 kwh in one bimonthly period. If recorded demand exceeds 10 kilowatts (kw) in two consecutive months, the customer is transferred to an appropriate demand rate, in this case, SC-9. Until 1994, the utility tariff required a customer to be reclassified SC-2 if recorded demand remained below 10 kw for twelve consecutive months. The standard now is 5 kw for twelve consecutive months in order to be reclassified SC-2.

Complainant has been a utility customer since October 21, 1967 and used a monthly high of slightly above 2,000 kwh of recorded service in the period up to April 4, 1984. Thereafter, usage increased significantly, but remained just under 3,000 kwh until recorded energy exceeded this limit in the two consecutive months ending December 1984 to qualify complainant for demand metering. Complainant's k-18 demand meter, no. 5150313, was installed on January 14, 1985. Following the registration of two consecutive monthly demands exceeding 10 kw, complainant was transferred to SC-9 effective November 9, 1985. On February 6, 1986, Con Edison tested the meter at complainant's premises and found the energy portion of the meter recording at an accuracy of 98.4%, which is within the accepted accuracy limits of 98% to 102% required under Section 92 of 16 NYCRR. The demand register, no. (continued...)

complainant was billed only for energy use on Service Classification No. 2, General - Small, (SC-2). The hearing officer found that Con Edison's installation of a demand meter in January 1985, capable of measuring a load much larger than complainant's, suggested that the utility had analyzed the electrical load requirements and expected an increase in service use.³ She also found that the meter exchange of February 6, 1986,⁴ several meter reading notations in the utility's account records, and the issuance of erratic bills appeared to indicate the existence of problems with the demand meter that prevented

²(...continued)

4862183, was not tested at the time of the meter test, but was replaced with demand register no. 3981073, which was tested prior to installation and found to be 100.0% accurate. It should be noted that in the course of reviewing the appeal case file, staff recently queried the utility to determine whether demand register no. 4862183 was tested following its removal. Con Edison discovered that it was, in fact, tested at the utility's meter testing facility on February 14, 1986 and found operating at an accuracy of 100.8%. Con Edison also indicated that register no. 4862183 was removed because demand registers cannot be tested in the field.

After recorded demands failed to reach 10 kw for twelve consecutive months, complainant was transferred back to SC-2 effective February 9, 1989. Complainant again qualified for SC-9 on December 12, 1989, after the registration of two consecutive demands exceeding 10 kw, but was returned to SC-2 effective June 9, 1993, when demand fell below 10 kw. On January 21, 1994, complainant was reclassified SC-9. Complainant's demand meter was replaced on March 14, 1994.

³ The hearing officer noted that Con Edison installed a demand meter with a k-18 multiplier ("meter constant") rather than one with a k-9 multiplier, which would have been adequate for complainant. The meter constant is the factor by which the difference in meter readings is multiplied to obtain the total registration of service.

⁴ It should be noted that the meter was not actually replaced during the "meter exchange" of February 6, 1986. Only the demand register was replaced at that time (see footnote 2).

complainant from qualifying for SC-9 at an earlier date.⁵ The hearing officer, therefore, directed the utility to rebill complainant on SC-9 with interest on overpayments for service in the period from January 14, 1985 to November 8, 1985. Our determination grants Con Edison's appeal and reverses the hearing officer's decision.

On appeal, Con Edison makes several arguments in support of its position that the hearing officer's reasons for finding that complainant was improperly retained on SC-2 when the demand meter was installed are speculative. It further argues that complainant was properly transferred to SC-9 in accordance with the applicable tariff. The following points summarize the utility's claims.

Specifically, Con Edison asserts that the hearing officer's inference--that the installation of a demand meter with a k-18 multiplier, rather than a smaller capacity demand meter, demonstrated the utility's knowledge of a substantial increase in complainant's electrical requirements--has no factual basis. The utility notes that it was obligated by its tariff to measure complainant's demand and maintains that the k-18 meter was not inappropriate for complainant's service level. With respect to the hearing officer's reference to several aspects of

⁵ The hearing officer took into account meter reading notations showing disagreement between "as found" and "as left" demand readings obtained on February 8, June 11 and August 9, 1985. Con Edison's records only indicate there was disagreement between the "as found" and "as left" readings but do not indicate what the conflicting demand meter readings were. The hearing officer also found that, based on recorded energy use and load factor, erratic monthly bills were issued prior to and around the time of the replacement of the demand register on February 6, 1986. The irregularities noted by the hearing officer are: 1) the high recorded energy use of 5,220 kwh and 90% load factor (with a demand of 8.28 kw) for the bill of April 11, 1985 indicating the bill of March 13, 1985 for 2,268 kwh (8.46 kw demand and low 33% load factor) was under-read; 2) the bill of August 9, 1985 for 3,096 kwh and 5.22 kw demand reflecting a high load factor of 85%; and 3) a billing credit of \$490.34 issued for an erroneous demand of 19.26 kw for the period of January 10, 1986 to March 16, 1986. Load factor represents the relationship between energy use and demand in a billing period.

complainant's account records (the meter "exchange", disagreement between "as found" and "as left" demand readings, and issuance of a credit to adjust the high demand on the March 1986 bill) to support her finding that problems with the demand meter prevented complainant from qualifying for SC-9 at an earlier date, Con Edison argues that the hearing officer neither states what is to be inferred from these records nor actually contends that any or all of these factors require the inference that demands over 10 kw (kilowatts) would have qualified complainant for SC-9 prior to November 1985 if any of the cited events had been different. For example, Con Edison claims that the meter "exchange" of February 6, 1986 was not the result of any finding that the meter was malfunctioning, as the hearing officer suggests, but that it was conducted as part of the Commission required periodic meter testing procedure.

Further, Con Edison asserts that the hearing officer's decision is inconsistent with numerous precedents where the Commission determined that the utility properly transferred a customer to SC-9 or retained the customer on SC-2 after a demand meter was installed. The utility argues that in a case in which, as here, a customer claimed its account should have been transferred to SC-9 at the time a demand meter was installed, the Commission affirmed Con Edison's transfer of the account only when demands equalled or exceeded 10 kw in two consecutive months.⁶ Con Edison also notes that, in the prior case, the Commission found that the utility does not need an explicit reason to meter a customer's demand⁷ and rejected the customer's claim that a connected load of more than 10 kw qualifies a customer for SC-9, which is the argument implicit in

⁶ In support of this argument, the utility relies on Case 91-E-0090, Appeal by Van Houten Realty of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., Commission Determination (August 12, 1991).

⁷ Con Edison's tariff states, "[t]he Company reserves the right to meter the demand of any Customer." (P.S.C. No. 8 - Electricity, III.11.(D)).

complainant's claim for billing on SC-9 from the time of the demand meter installation.

Urac, complainant's representative, agrees with the hearing officer's findings that the irregular demand readings and erratic billing support backbilling on SC-9, and makes several arguments in response to Con Edison's appeal of the informal hearing decision. The following points summarize Urac's arguments.

Urac claims that complainant's position is not based on "connected load" and that, unlike the customer in Case 91-E-0090, Van Houten, complainant upgraded its service in late 1984 and qualified for SC-9 within the first year of the demand meter installation, which is evidence that complainant's actual (or electrical) requirements exceeded 10 kw following the service upgrade. It contends that, as a result of the service upgrade (which made complainant ineligible for SC-2, which is applicable only to accounts with actual electrical requirements of less than 10 kw), Con Edison, pursuant to General Rule III-13(A),⁸ should have deemed complainant's service agreement to be terminated or modified to conform with the appropriate provisions of Con Edison's tariff and should have requested that complainant make a new application for service appropriate to the service.

Further, Urac asserts that delaying the transfer of a customer to SC-9 until recorded demands qualify the customer for this rate, when the customer's service has been upgraded and exceeds 10 kw, is contrary to the purpose of metering demand, which is to reimburse the utility for the costs associated with

⁸ General Rule III-13 (A): "Upon any change in such use contrary to such conditions the Customer shall forthwith notify the Company thereof in writing. In the event that the Customer's use of service is contrary to the provisions of the Service Classification or Rider, or both under which the Customer is being served, the Customer's agreement shall be deemed to be terminated or to be modified as may be required to conform to the appropriate provisions of the Rate Schedule and the Customer will be billed accordingly, and, upon request by the Company, the Customer shall make a new application for service in accordance with General Rule III-1 (A) "Applications", appropriate to the service for which the Customer is eligible under the provisions of this Rate Schedule."

the increase in service requirements. Urac also makes two arguments regarding the demand meter that was originally installed in January 1985. Regarding Con Edison's assertion that the installation of a k-18 demand meter is not inappropriate, Urac contends that the utility's own Division Operating Procedure (DOP) 4-6-11 requires the installation of a demand meter appropriate to the recorded load,⁹ that the wrong meter size can lead to other problems (such as testing a meter's accuracy),¹⁰ and that if Con Edison expected complainant's load to be less than 10 kw it would not have installed a demand meter capable of recording demands of 72 kw. Urac also argues that, even if complainant's position is found to be without merit, Con Edison delayed installing a demand meter by one month, which is not consistent with its tariff.

With respect to the Con Edison test report of February 14, 1986, showing that demand register no. 4862183 recorded accurately, Urac makes several arguments challenging the test results. Urac contends that, contrary to Con Edison's assertion that demand registers cannot be tested in the field,¹¹ it has witnessed demand registers being tested in the field by the utility and staff of the Consumer Services Division. Urac also claims that the 98.4% accuracy for the watthour portion of the meter that was tested at complainant's premises on February 6, 1986 is low and directly affected the accuracy of demand register no. 4862183, which was not tested at complainant's premises. Because this demand register was not attached to the watthour

⁹ Although Urac cites DOP 4-6-11 in support of this assertion, we note that mention of a demand meter "appropriate to the recorded load" is actually made in the utility's Bulletin #144, which was issued on September 1, 1988.

¹⁰ The argument that the wrong meter size can lead to a testing problem, particularly where there is a wide disparity between the size of the meter and a customer's normal demand load, is related to Urac's claim, discussed below, that Con Edison incorrectly tests meters involving consumer complaints at half a meter's full scale.

¹¹ See the last sentence in the second paragraph of footnote 2.

portion of the meter when it was tested, the consultant contends that the test result of February 14, 1986 for the register is invalid.¹²

Urac further claims, citing a prior informal hearing decision in support of this assertion, that Con Edison incorrectly tests meters involving consumer complaints at half of a meter's demand scale.¹³ (Half scale here is 36 kw.) Urac complains that, if the customer's normal operating load (in this case, about 10 kw) is much lower, then the test will not reveal the true accuracy under normal operating conditions.

We grant Con Edison's appeal and reverse the hearing officer's finding that complainant qualifies for SC-9 from the date the demand meter was installed in January 1985. Our conclusion is based primarily on the Con Edison test report of February 14, 1986, which found the demand register in question (no. 4862183) recording accurately. This test is compelling evidence that the readings on which the billing, and thus, the transfer to SC-9 in November 1985 were based were accurate. In reaching our determination, we also find merit in Con Edison's position that the irregular demand readings and billing relied on by the hearing officer¹⁴ are not, as Urac alleges, evidence of a

¹² Urac cites the following passage from page 496 of the Handbook for Electricity Metering in support of its claim: "Since the pusher arm which advances the demand meter pointer is geared to the watthour meter shaft, the accuracy of the demand indication is dependent upon the accuracy of the watthour meter."

¹³ URAC cites the informal review decision in the complaint of Glen Oaks (E185166, issued May 17, 1994), where the hearing officer found that Section 92.22(m) of 16 NYCRR requires the utility to test a demand meter at approximately half a customer's normal load and that Con Edison failed to do so. Section 92.22(m) states in relevant part, "A complaint test of a demand meter or demand register shall be made with the meter and the register installed in place on the customer's premises, under local operating conditions, without requiring the removal of the demand meter or demand register in any manner from its permanent position prior to test,..." It should be noted that Con Edison appealed the informal decision in the Glen Oaks complaint, but that the parties subsequently resolved the complaint via a settlement.

¹⁴ See footnote 5.

problem with demand register no. 4862183. In our judgment, the low energy use of 2,268 kwh (kilowatthours) billed on March 13, 1985 is not related to the demand register, but reflects an under-reading of the energy registration that was corrected by the subsequent bill of April 11, 1985 for 5,220 kwh.

The utility credit adjustment issued on the bill of March 16, 1986 for an erroneous demand of 19.26 kw appears to be based on a reading obtained from the second demand register, which replaced demand register no. 4862183. The reading obtained when register no. 4862183 was replaced on February 6, 1986 reflected a much lower demand of 10.26 kw. Thus, the credit adjustment is not related to a problem with the demand register in question, but with the register that replaced it, which Urac does not question in this complaint.

With respect to the account notations indicating disagreement between the three "as found" and "as left" demand readings of demand register no. 4862183 for February 8, June 11 and August 9, 1985, we find that these notations are not evidence of improper demand registration. We note that disagreements between readings are not uncommon, can be the result of misreadings by the meter reader, and do not necessarily indicate a problem with the demand register. Since the specific readings are not shown in Con Edison's records, it is not possible to evaluate whether other explanations for concluding such disagreements may exist. Accordingly, we conclude that these irregularities do not warrant the conclusion that the demands were not properly recorded or that the true demand for these periods exceeded 10 kw, particularly in light of the test report showing that the demand register in question recorded accurately.¹⁵

We reject Urac's position challenging the test results of February 6 and February 14, 1986 as being invalid. Although Urac correctly argues that demand registers can be and have been tested in the field (the customer's premises), such tests are

¹⁵ See footnote 2.

only required to be conducted in the field if, as discussed below, they are made in response to customer complaints involving the utility and/or the Consumer Services Division. Con Edison is not required to test a demand register in the field when the test is being performed under the utility's periodic meter testing program, as occurred here. The utility's normal practice when conducting a periodic test is to test a customer's demand register at the utility meter shop. Regarding the consultant's claim that the result of 98.4% for the watthour meter test that was performed in the field on February 6, 1986 is low, this assertion appears to suggest that the meter recorded inaccurately. However, the 98.4% test result, and the test result of February 14, 1986 of 100.8% for demand register no. 4862183, are each within the acceptable accuracy limits of 98% to 102%.¹⁶ Further, although Urac correctly points out that, because the demand register is connected to the watthour meter, the accuracy of the demand registration is dependent upon the accuracy of the watthour registration, meter testing staff of the Consumer Services Division is of the opinion that testing a demand register that is removed from the associated watthour meter does not invalidate the test results for the register. Both the watthour meter and the demand register recorded within the accepted accuracy limits of 98% to 102%, and it is the opinion of expert staff that the slight under-registration of the watthour meter (98.4% accuracy) offset the slight over-registration of the demand register (100.8% accuracy) and resulted in an effective accuracy range of 99% to 100%. We therefore conclude that demand register no. 4862183 and the associated watthour meter operated accurately.

Urac's claim that Con Edison incorrectly tests demand meters involving consumer complaints at half the meter's full demand scale rather than at half a customer's normal demand load, and that the results of the test here, conducted at half scale, are unreliable because they fail to reveal the meter's true

¹⁶ 16 NYCRR, Section 92.

accuracy under normal operating conditions, is rejected. Three meter testing protocols, provided under the Commission's regulations, are relevant to Urac's claim: (1) the basic testing requirement calls for all demand meters and registers to be tested at approximately half of full scale;¹⁷ (2) a complaint test, which is a utility test requested by the customer, of a demand meter or demand register is required to be made at a customer's premises "under local operating conditions";¹⁸ and (3) referee tests, which are tests conducted or witnessed by a representative of the Commission as a result of a complaint to the Commission, are made "in a manner acceptable to the Commission", which traditionally has meant testing at half a customer's normal recorded load.¹⁹

In this case, the demand meter was tested at half of full scale, as required by Section 92.18, because the meter was tested under Con Edison's periodic meter testing program, which requires testing a meter at fixed intervals, and was neither a complaint test nor a referee test. Urac does not assert that it requested a complaint test prior to or around February 1986, when the demand register in question had been replaced and tested and found to record accurately pursuant to Section 92.18. By the time complainant filed complaints with Con Edison in November 1987 and Commission staff in March 1989, the register was no longer available for retesting. The fact that the demand meter

¹⁷ 16 NYCRR, Section 92.18 provides: "All demand meters and registers, except block-interval pulse-operated recording tape-type demand meters, shall be tested at approximately 50 percent of full scale." It should be noted that testing demand meters at approximately 50 percent of full scale is also recommended by the American National Standards Institute (ANSI).

¹⁸ Section 92.22(m) provides: "A complaint test of a demand meter or demand register shall be made with the meter and the register installed in place on the customer's premises, under local operating conditions, without requiring the removal of the demand meter or demand register in any manner from its permanent position prior to test..."

¹⁹ 16 NYCRR, Section 92.22(n) provides: "Referee tests shall be made in a manner acceptable to the commission."

was not tested at half complainant's normal load, as would have been done in a complaint test, is not a valid basis for the conclusion that the test that was done was unreliable. The utility's test was performed in compliance with applicable regulations. We thus find that complainant was properly billed for demands recorded on an accurate register and was properly transferred to SC-9 effective November 9, 1985 in a manner consistent with the utility's tariff.

We also find that Urac's reliance on the informal decision in the complaint of Glen Oaks Village is misplaced because the meter testing regulations do not support the hearing officer's conclusion that the utility was required to test the demand meter at half a customer's normal load. Section 92.18 is quite clear in stating that, excluding one type of demand meter that is not pertinent here, all demand meters are required to be tested at approximately half of full scale. We also note that, in any event, Glen Oaks involved two tests of the same demand meter showing a wide discrepancy in test results,²⁰ whereas in this case there is only a single test showing that the meter register was accurate.

Regarding Urac's argument that under General Rule III-13(A) of the utility's tariff, Con Edison should have requested that complainant make a new application for service because of the service upgrade, we find this to be entirely without merit because Urac has presented no evidence that complainant upgraded its service, that the upgrade was contrary to the provisions of service under SC-2, or that complainant notified the utility of the upgrade, as required by General Rule III-13(A). With respect to the argument that Con Edison would not have installed a k-18 demand meter if it had not expected complainant's load to be greater than 10 kw, we find this claim to be unsupported. The replacement of a k-9 energy meter with a slightly larger k-18

²⁰ The first test was a complaint test performed by Con Edison at half the meter's full scale and showed that energy and demand recorded accurately. The second test was a referee test performed by the Consumer Services Division at half the customer's normal load and showed that the demand register was significantly slow.

demand meter was occasioned solely because of an increase in consumption. The fact that a k-18 meter was installed does not demonstrate that the utility had knowledge of a substantial increase in complainant's electrical requirements. It is equally possible that a k-18 demand meter was installed because it was the most readily available at the time. Had Con Edison installed a much larger demand meter, perhaps a meter with a k-36 or higher constant, we might agree with Urac that the utility was aware of a substantial increase in complainant's electrical requirements.

Moreover, it should be noted that Urac's reference to Con Edison's Bulletin #144 is not relevant to the meter size issue. Bulletin #144 became effective on September 1, 1988, well after complainant's demand meter was installed in January 1985, and, other than stating that the utility is required to install a demand meter appropriate to a customer's recorded load, it does not specify the meaning of "appropriate." We find that the k-18 meter that was installed was only moderately larger than the k-9 meter it replaced and, thus, was not inappropriate for complainant's electrical requirements.

Also, Urac wrongly asserts that consecutive recorded demands in excess of 10 kw within the year of the installation of the first demand meter is evidence that complainant's actual electrical requirements exceeded 10 kw as a result of the alleged service upgrade in late 1984. In this case, the demand meter was installed in January 1985 and no actual recorded demands in excess of 10 kw were registered until October 1985. This evidence could be explained as well by a drop in the hours of operation or as a later addition of equipment. In addition, as discussed above, Urac provided no information concerning complainant's alleged service upgrade in late 1984.

Finally, Urac's claim that Con Edison delayed the installation of the demand meter by one month following the registration of the second demand over 10 kw in December 1984 has some merit. However, had a demand meter been installed right after complainant qualified for demand metering in December 1984 and the first recorded demand exceeded 10 kw, it would have been

the only demand over 10 kw until the two consecutive demands over 10 kw actually qualified complainant for SC-9 in November 1985. Accordingly, even in the circumstances most favorable to complainant, the delay had no effect on the billing.

In order to assure that all aspects of this case have been properly addressed, we have thoroughly reviewed the entire complaint file. We determine that, based on complainant's billing history and the test result for demand register no. 4862183, complainant was properly billed for demands recorded on an accurate register and, consistent with Con Edison's tariff, was transferred to SC-9 effective November 9, 1985. Therefore, we grant the utility's appeal and reverse the hearing officer's decision.