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nationalgrid

September 12, 2014

VIA ELECTRONIC MAIL

Kathleen H. Burgess
Secretary
New York State Public Service Commission
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**Re: Edward Kalikow
Informal Review Decision
Case #230132
Flushing, NY 13373**

Dear Secretary Burgess:

Enclosed for filing is the Reply of The Brooklyn Union Gas Company d/b/a National Grid NY to the letter dated August 19, 2014 submitted by Utility Rate Analysis Consultants Corp.

Please contact me if you have any questions or require further information.

Yours truly,

Philip A. DeCicco
Philip A. DeCicco

cc: Douglas DiCeglio (Urac Corp) (via electronic mail)
(DDiCeglio@UracCorp.com)

**NEW YORK STATE
PUBLIC SERVICE COMMISSION**

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CASE 230132

Edward Kalikow
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**REPLY OF
THE BROOKLYN UNION GAS COMPANY d/b/a NATIONAL GRID**

The Brooklyn Union Gas Company d/b/a National Grid NY (“National Grid” or the “Company”) respectfully submits this reply to the letter dated August 19, 2014 (“August 19 Letter”), submitted by Utility Rate Analysis Consultants Corp. (“URAC”) in response to National Grid’s August 18, 2014 Appeal (“August 18 Brief”). URAC claims that (1) National Grid’s arguments raised in the August 18 Brief are “so far off base” as to require no response; (2) that the Company has failed to apply the terms of its tariff, and (3) that the Company’s interpretation of its tariff affects all utilities within the state and urges the Commission to solicit other utilities to participate in this proceeding. URAC’s claims are misplaced.

The points addressed in the August 18 Brief are supported by well-established New York State Public Service Commission (“Commission”) precedent. URAC’s conclusory statement that the Company’s arguments “are so far off base” is belied by the fact that URAC has opted not to address any of them and does not cite a single authority to refute National Grid’s position.

1. The Company is Enforcing its Tariff

URAC claims that National Grid is ignoring its responsibility to enforce its tariff. The opposite is true. As explained in the August 18 Brief (at 7-8), National Grid’s tariff does not require the Company to monitor SC 6M customer usage following turn on. The tariff sets forth the obligation to assign the customer to the appropriate rate segment “upon written application”¹;

¹ The Brooklyn Union Gas Company, P.S.C. No. 12- Schedule for Gas Service, Leaf 216-Revision 2 (Effective August 1, 2005).

nowhere in the language of the tariff relating to the SC 6M rate does it state or suggest that National Grid is responsible for monitoring actual usage on an ongoing basis to determine ongoing rate eligibility. Requiring National Grid to retroactively rebill the current account at the SC 6M3 rate would have the effect of imposing a new obligation on National Grid to continually monitor the actual usage of its SC 6M customers in order to automatically migrate accounts between segments.²

2. This Case Should Not Be Treated As a Generic Proceeding As Suggested by URAC

URAC claims that every utility in the state could be affected by the outcome of the current proceeding and requests that other utilities be solicited to participate in this proceeding. As an initial matter, as every utility in the state is governed by the terms of its own tariff, it is hard to conclude how the outcome of this proceeding would have any impact on the future practices of any utility other than National Grid. Further still, this appeal arises out of an individual consumer billing dispute; it is not a generic proceeding and treating it as such in the manner suggested by URAC would violate the requirements for agency rulemaking as set forth in Article 2 of the New York State Administrative Procedure Act.

Finally, URAC 's claim that National Grid should be required to follow the purported Consolidated Edison of Company of New York, Inc. ("Con Ed") practice of automatically migrating its SC 2 customers to the SC 9 class when usage dictates without requiring notice from the customer is irrelevant. Even if that is Con Ed's practice, the language of Con Ed's electric

² To read this obligation into the tariff would run afoul of the filed rate doctrine. It is well settled that the tariff governs the terms and conditions of service and may not be either ignored by the utility or collaterally challenged. See, e.g., Matter of Walton v New York State Dept. of Correctional Servs., 13 N.Y.3d 475, 495 (2009). "It has repeatedly been held that a consumer's claim, however disguised, seeking relief for an injury allegedly caused by the payment of a rate on file with a regulatory commission, is viewed as an attack upon the rate approved by the regulatory commission. All such claims are barred by the 'filed rate doctrine'." Porr v. NYNEX Corp., 230 A.D.2d 564, 568 (2d Dep't 1997).

tariff with respect to its SC 2 rate is very different from the language found in National Grid's tariff. Con Ed's tariff provides "Whenever a Customer's metered use under this Service Classification exceeds 10 kilowatts of maximum demand in two consecutive months, the Customer's use thereafter will be billed under the appropriate Service Classification for the Customer's use of service."³ The plain language of Con Ed's tariff certainly suggests that Con Ed has affirmatively obligated itself to monitor its SC 2 rate customers and transfer them automatically whenever usage exceeds 10 kilowatt hours for two consecutive months. National Grid's tariff contains no language which similarly obligates it to monitor SC 6M accounts to determine whether they are receiving service at the most advantageous rate. Thus, reliance on the Con Edison tariff here is misplaced and URAC's request that the practices of other utilities be considered in determining the outcome of this customer billing dispute should be denied.

³ Consolidated Edison Company of New York, PSC No. 10, *Schedule For Electric Service*, Leaf 401-Revision 3 (effective May 12, 2014).

CONCLUSION

For the reasons explained above, National Grid is not required to continually monitor the usage of SC 6M customers to ensure that they are on the correct rate segment. Accordingly, Mr. Kalikow is not entitled to have his account retroactively rebilled, and National Grid respectfully requests that the Informal Decision be reversed.

Respectfully submitted,

/s/Philip A. DeCicco

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