

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 02-E-1328 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16 NYCRR, in Relation to Complaint Procedures--Appeal by Touro College of the Informal Decision Rendered in Favor of Consolidated Edison Company of New York, Inc., filed in C 26358 (022013).

COMMISSION DETERMINATION
(Issued and Effective August 24, 2007)

The Commission received an appeal by Touro College (the complainant) from an informal hearing decision dated September 18, 2002, in favor of Consolidated Edison Company of New York, Inc. (Con Edison or the utility).¹ The informal hearing officer found that the complainant's electric account was not entitled to retroactive billing at the utility's area development rate (ADR).² For the reasons stated below, we uphold the informal decision and deny the complainant's appeal.

BACKGROUND

Utility records show that on November 26, 1996, Con Edison placed Touro College on record for gas and electric service to a building located on Lincoln Avenue, in the Bronx, New York, with a responsibility date of November 12, 1996. The records also show that the utility mailed Touro College

¹ The complainant is represented by a consultant, Utility Check Ltd.

² The electric ADR was a phased discount rate available to new and existing non-governmental customers receiving service under Service Classifications 2, 4 or 9 in specific geographic areas within the utility's service territory. It was introduced to assist applicants starting new businesses or expanding their current businesses to encourage and stimulate economic development in particular areas. The rate was closed to new commercial applicants on March 31, 1997. During the period that the electric ADR rates were available, the utility also offered ADR rates for gas service.

information about and an application for the ADR on November 26, 1996. The account was closed on September 28, 2000.

In October 1999, Touro College complained to the Department of Public Service's Office of Consumer Services (OCS), asserting that Con Edison should have billed it, from November 1996, on the utility's ADR for the electric portion of its account. (As will be discussed later, the complainant's minimal gas usage was billed on the gas ADR.) Staff's initial decision, dated January 4, 2000, found that the complainant failed to return the application for the ADR, as required by the tariff and therefore was properly denied rebilling on the rate. The complainant objected, and, in an effort to resolve the matter, the utility gave the complainant a one-time adjustment to reflect ADR billing for electricity from November 12, 1996 to April 11, 1997.³

The complainant requested an informal hearing, which was held on December 6, 2000. At the hearing, the complainant argued that since the utility billed the gas portion of its account on the ADR, the complainant must have submitted the required application for the rate, and the utility simply forgot to place the electric portion of the account on the ADR. The utility submitted records for the account showing that it had mailed a letter to Touro College on November 26, 1996, informing the complainant of the ADR and enclosing an application for the rate. The utility stated, however, that the complainant failed to apply for the ADR and did not furnish documentation required for placement on the rate, and therefore,

³ By letter dated April 17, 2000, the utility explained to Staff that this one-time adjustment was made "due to the confusion over the Area Development rate." The resulting adjustment totaled \$621.61 and included interest.

did not qualify for the rate.⁴ The utility also stated that all ADR applications were forwarded to its ADR coordinator for review and he had verified that he had not received such an application for the rate from the complainant. In addition, the utility stated that its placement of the gas portion of the account on the gas ADR was an error, resulting from improper coding of the account by one of the utility's representatives. The utility noted that the complainant received no benefit from being billed on the gas ADR because the complainant's gas usage was minimal, and the cost reduction built into the rate did not take effect unless a customer used 250 therms or more of gas during a month. (Utility records show that the complainant used only five therms of gas from August 12, 1998, to August 10, 2000, which indicated minimal gas use over two years.)

⁴ The utility's tariff required an applicant for the ADR to demonstrate that either that (1) its activities were largely different in nature from those of the previous customer or that the owners or operators or managers were substantially different, or (2) business had not been conducted at the premises for a least two monthly billing periods prior to application, or (3) the predecessor customer was bankrupt and the applicant had obtained the business in a liquidation of assets sale. P.S.C. No. 9-Electricity, Original Leaf No. 98, and P.S.C. No. 8-Gas, Eleventh Revised Leaf No. 16-B and First Revised Leaf No. 16-B-1. The utility's Area Development Application for either or both the electric or gas ADR (a blank copy is included in the file) asked new customers to provide supporting documentation such as a lease, business certificate, deed, state license, incorporation certificate, or other. It also required the applicant to fill in check boxes to provide information to determine whether the customer met the tariff's eligibility requirements. Section 4.2 of the utility's Division Operating Procedure 4-1-15 for the electric ADR indicated that the utility's branch manager would review each application to determine whether the customer's premises were within a designated area development district and whether the customer was either a new customer or an existing customer planning a significant increase in electric usage.

In her decision dated September 18, 2002, the hearing officer found no evidence to show the complainant ever filed an application requesting the ADR. She concluded that, although the utility's reason for placing the gas portion of the account on the ADR was unknown, this did not adequately support the complainant's argument that an application for the ADR was received by the utility.

POINTS ON APPEAL

By letter dated September 27, 2002, the complainant appeals from the informal hearing decision alleging the following errors:

(1) The hearing officer should not have accepted the utility's explanation that the gas portion of the account was incorrectly coded for the ADR, without requiring the utility to provide documentation proving it. The hearing officer failed to consider the extensive effort ordinarily made by the utility to determine if a customer is eligible for the ADR, asserting that in order for a customer to receive the ADR a completed application, considerable documentation and a branch manager's approval were required.

(2) The utility's limited adjustment of the electric portion of the account to reflect ADR billing up to April 11, 1997, was inadequate since, although the program was closed to new applicants as of March 31, 1997, those previously qualifying for the rate were entitled to remain on it after April 11, 1997 (see note 2, supra).

(3) The utility would not have retained the gas portion of the account on the ADR or chosen to rebill the electric portion of the account up to March 31, 1997, on the ADR, if the utility had not "deemed its actions as culpable."

DETERMINATION

The central issue in this case is whether the utility incorrectly failed to bill the electric portion of Touro

College's account at the ADR at the time of service commencement and incorrectly refused to rebill the complainant's electric service, with interest, for the entire period from the date Touro College became responsible for the account (November 12, 1996) to the date the account was closed (September 28, 2000).

The complainant asserts that the utility's billing of the gas portion of the account on the gas ADR from November 1996 on proves that the complainant must have submitted to the utility both an application for the electric and gas ADR, and the supporting documentation required for the rate (see note 4, supra). The complainant argues that the utility's assignment of the gas portion of its account to the ADR could not have occurred by mistake, but only following an extensive review of the ADR application and documentation. The complainant argues, however, that the utility did make a different mistake, in failing to assign the electric portion of Touro's account to the ADR.

The utility, on the other hand, contends that it never received an ADR application from the complainant and that an employee erred in assigning the gas portion of the account to the ADR.

What evidence exists in this case better supports the utility's position than the complainant's. Utility records submitted at the informal hearing show that the utility sent the complainant an ADR application on November 26, 1996, but do not show receipt by the utility from the customer of either a completed ADR application or documentation to support such an application from the customer. In addition, the utility records do not show any extensive review by the utility of the sort the complainant contends must have occurred for the gas portion of the account to be assigned to the ADR. The complainant has not submitted any documentation of its own to support its position that it applied for, and was qualified for, the ADR.

The utility's provision of a limited adjustment of the complainant's electric billing does not indicate, as the complainant contends, that the utility acknowledged it had received an ADR application from the complainant. The available information indicates that the utility attempted through this adjustment to resolve the matter with the complainant. It may have been imprudent of the utility not to obtain an agreement from the complainant to drop its complaint as a condition of making the adjustment. However, the adjustment does not prove anything other than the utility's willingness to try to resolve the complainant and its recognition that the assignment of the gas portion of the account to the ADR may have created confusion. The utility's continued assignment of the ADR to the gas portion of the complainant's account was irrelevant: as stated earlier, this designation had no impact on the billing of the gas portion of the account because the complainant's minimal gas usage failed to reach the threshold for application of the ADR discount.

CONCLUSION

In order to assure that all aspects of this case have been properly addressed, the case file has been thoroughly reviewed. We determine that the evidence does not support the complainant's assertion that it applied for the ADR for its electric service when it took service in November 1996, or that the complainant is entitled to rebilling of its electric service up to the date the account was closed (September 28, 2000). Therefore, the complainant's appeal is denied and the informal hearing decision is upheld.