STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

CASE 95-E-0064 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures --Appeal by County of Suffolk of the Informal Decision Rendered in Favor of Long Island Lighting Company of New York, Inc., filed in C 26358 (550663)

COMMISSION DETERMINATION
(Issued and Effective April 17, 1998)

This is an appeal by County of Suffolk, complainant[1], to the Commission from an informal review decision dated January 10, 1995. The complaint concerns the Long Island Lighting Company's (LILCO) decision not to change complainant's service classification from the General Large Demand Rate (SC-2L), on which it was being billed, to the utility's Large General and Industrial Service with Multiple Rate Periods (SC-2MRP) when complainant upgraded its service. For its informal review complainant argued that as a result of a service upgrade, which resulted in a total connected load[2] of 770 kW as evidenced by a load letter from the complainant's contractor to the utility, its existing electric meter was replaced with one which had a far greater capacity,[3] and, thus LILCO should have transferred complainant's account to the SC-2MRP rate in accordance with the

[1] Complainant is represented by a consultant, URAC Corporation.

[2] Throughout the course of this complainant the consultant, has used the terms "load information" and "connected load" interchangeably. Connected load simply means the total electric load that exists, but not necessarily in use, at a customer's premises.

[3] On May 25, 1986, the utility replaced complainant's existing meter, which had a multiplier of 120 with a meter which had a multiplier of 480.

utility's tariff.[4] The complainant further argued that LILCO assigns a rate classification solely based on load information provided by a customer at the inception of service or at the time of a service upgrade. In support of this argument the complainant provided examples of nine accounts that were assigned the utility's large commercial rate classification, SC-2L. The utility maintained that it acted in accordance with its tariff in not transferring the account to the MRP rate when complainant's service was upgraded. Specifically, the utility asserted that under its tariff, the account may be transferred to the MRP rate if in the company's opinion an applicant will exceeded 500 kW in any two months and since the complainant's demand never reached this level, the utility maintained that it made the right decision.

The hearing officer found that "the language of the tariff left a wide margin for the utility in determining which customers would be transferred to the 2-MRP rate" and that since the complainant's subsequent usage was less than the 500 kW threshold[5], the utility made the correct choice by not transferring the account to the 2-MRP rate and that these facts distinguished this case from the examples provided by the complainant.

On appeal the consultant raises the same issues it did in the informal review. It argued that the utility usually reviews a customer's load information to determine the appropriate service classification, citing the examples previously provided, and noted that there is nothing in the case

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[4] PSC No. 7-Electricity - 25th revised leaf No. 33I, states in pertinent part:

> Any purpose when the monthly demand has exceeded 500 kW any two of the previous twelve months, or whenever in the Company's opinion an applicant's demand will exceed 500 kW in any two months. If after twelve months on this service classification a new account does not record a demand of 500 kW in any two months, at the option of the customer, the account will be transferred to the appropriate Service Classification No. 2-L or 2-H.

[5] Utility records indicate that during the period in question the customer's maximum demand reached 389 on July 31, 1987.

file that reveals that LILCO used anything but a load letter[6] in determining the complainant's rate when the service was upgraded. However, the consultant argued that the utility incorrectly left complainant on the SC-2L rate instead of transferring it to the SC-2MRP rate when complainant's service was upgraded and the utility offered nothing other than self-serving conjecture to support their decision. Based on its arguments, the consultant believes that the account should be rebilled on the SC-2MRP rate for the period of May 1986, when the upgrade occurred, to April 1989, when complainant's account was switched to the SC-2MRP rate.[7]

DETERMINATION

The central issue in this matter is whether the utility was correct to retain the customer on the SC-2L rate when complainant's service was upgraded. After reviewing the utility's records, complainant's consumption history, and the applicable tariff, we find that the complainant's account did not qualify for the MRP rate when complainant upgraded its service.

The tariff provides two independent conditions which govern the assignment of the SC-2MRP rate. First, the tariff requires the utility to assign the MRP rate to an account if a customer's demand exceeds 500 kW per month for any two months of the previous twelve month period. Second, exclusive of this demand requirement, the tariff permits the utility to use its judgement and expertise in estimating whether a customer's demand will exceed 500 kW per month for any two months of a twelve month

[6] The case file contains a "load letter" dated June 17, 1983 from the complainant's contractor to the utility indicating that complainant's connected load after the service upgrade will be 770 kW.

[7] On January 29, 1989 the utility lowered its minimum demand requirements for the SC2-MRP rate. A customer could now get on the rate with as little as a demand of 165 kW in a summer month. The threshold requirement for getting onto the rate during the non-summer months remained the same -- demands greater than 500 kW in any two of the previous 12 months. It was as a result of this change in the tariff that the customer became eligible for and was switched to the rate in April of 1989.

period. Since the complainant's demand only reached a maximum of 389 during the disputed period, the complainant did not qualify for the MRP rate under the first condition. With respect to the exercise of the Company's discretion not to reclassify this account after the 1986 upgrade, we find that no evidence has been presented to show that this decision was not in conformance with standard company practice or was in any other way an abuse of discretion.

The consultant's argument that its connected load after the upgrade in 1986 qualified it for the SC2-MRP rate is unsupported and thus rejected. First, we note that there is no evidence in the record of this case regarding the evaluation process or standards used for the assignment of the MRP rate, which is at issue in this case. The examples provided by the customer all concern the assignment of the SC-2L (Large Commercial) rate, for which the minimum demand requirement is only 7 KW.[8] In fact the evidence supplied, to the extent that it is deemed to have any applicability at all, tends to support the utility's position here. The several examples presented to show that the utility used customers' connected load as the basis of assigning the SC-2L (Large Commercial) rate instead of the SC-2 (Small Commercial) rate do indicate that the utility has used a customer's connected load as part of the utility's basis of assigning SC-2 or SC-2L to an account, but they do not show that connected load was the sole basis for assigning a rate, nor do they show exactly how connected load was evaluated. These cases certainly do not support customer's contention that having connected load equal to the minimum demand level set under the service classification suffices. In all the examples provided the connected load is substantially greater than the minimum demand required for eligibility for the SC-2L service classification.

[8] Given that the SC2-MRP rate involves significantly larger levels of demand and billing than the SC-2L rate the utility might be able to justify a more conservative method for evaluating connected load than it does in the case of the SC-2L rate or even to rely exclusively on the recording of actual qualifying demands before reclassifying an account as MRP.

Specifically, these customers' connected load ranged from 23 to 39 kW, which is 300 to 500% greater than the minimum demand requirement of 7 kW for the SC-2L rate.[9] While there is no evidence in this case about the method used by LILCO to evaluate an account's eligibility for SC-2L, these cases suggest that a substantial multiple over the minimum was required. Here complainant's connected load is only 22% greater than the minimum requirement of the MRP rate,[10] and if the same standard apparently used by the utility in the examples presented was applied to the customer's account, it would not qualify. Accordingly, we find complainant's argument to be without merit.

We have repeatedly found and now reaffirm that a utility does not have an obligation to assign a rate classification based on connected load. While a connected load may be one factor to consider when selecting a rate classification, there may be other factors the utility may want to consider as well, such as the type of electrical equipment a customer has and/or the nature of the customer's business. Even if connected load alone is used to determine the appropriate service classification, it is proper for a utility to require a connected load of some amount, or factor, greater than the minimum demand for the service classification.

In order to assure that all aspects of this case have been properly addressed, staff has thoroughly reviewed the full

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[9] Six of the examples the consultant furnished involved new customers who indicated their connected loads ranged from 23 to 38.2 kW on their service applications. These customers were assigned the SC-2L rate. Two other examples involved customers who upgraded their service and were placed on the SC-2L rate, apparently based on their connected loads, after their upgrades. In one of these cases, the load letter provided by the customer's contractor indicated that the customer's connected load was 39 kW. The consultant failed to provide the exact connected load of the other customer.

[10] Although the load letter (See note 6, Supra) indicated that complainant's connected load would be 770 kW, 128 Kw of this was allocated to reserve capacity, thus making the complainant's actual connected load (according to its contractor) 642 kW, which is only 22% greater than the threshold requirement for the SC-2MRP rate.

record. We determine that the utility was correct in not reclassifying complainant’s account on the SC-2MRP rate when complainant’s service was upgraded.