

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 94-G-0355 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures--Rehearing Petition by Somerset Management of the Commission Determination Rendered in Favor of The Brooklyn Union Gas Company filed in C 26358 (772158)

COMMISSION DETERMINATION
(Issued and Effective November 13, 1997)

This is a petition for rehearing by Somerset Management, complainant,¹ of a Commission determination issued February 19, 1997 (copy attached). Our prior determination upheld the informal hearing officer's decision, which found no basis for complainant's claim that The Brooklyn Union Gas Company ("Brooklyn Union" or the utility) failed to assist complainant in selecting the best available gas rate for its 4 water heaters and 2 interruptible space heating boilers and, thus, wrongly assigned different rates to the water heaters (originally SC-1, residential service, and subsequently SC-3, heating and/or hot water service) and boilers (SC-6B, temperature controlled service) when service was initiated on separate accounts. We also found that the provision of gas through the same meter for different uses which are each entitled to be billed on different rates does not constitute a violation of the tariff or an impermissible configuration for which the utility may refuse to supply service, unless the piping is unsafe, and that the utility has the right to bill such service at the more costly of the two applicable rates.² For the reasons set forth below we affirm our prior determination.

¹ The complaint is made on behalf of Somerset Management by Mr. Vincent DiCeglio of Urac Corporation (Urac), a rate consulting firm.

² The prior Commission determination found that because the water heating meter also supplies six commercial dryers, the only proper rate for this account is SC-2 (general service). It also found that a procedural error by the hearing officer did not cause harm or reflect bias on his part. However, these findings are not at issue on rehearing.

POINTS ON REHEARING

On rehearing, Mr. DiCeglio, complainant's consultant, makes several arguments in support of complainant's position that the utility did not assist it in selecting the proper equipment to qualify for the most favorable rate available at the initiation of service, and, in the alternative, requests a formal hearing. Mr. DiCeglio stresses that in his first load letter (service request) complainant's consulting engineer, Abraham Joselow, expressed his client's interest in using oil in combination with gas in order to save on winter billing, and asserts that the consulting engineer's revised load letter only changed the type of water heating equipment to be used, not the type of gas service requested.³ The rate consultant also argues

³ The first load letter to the utility, dated February 10, 1986, states:

"The subject site will be improved with a new apartment building containing 116 families. The owners have expressed interest in using natural gas for heating, cooking, hot water and laundry. The owners have also expressed interest in using oil for the boilers in combination with gas to save winter fuel bills. Please provide #3 and #6 rates for this building based on the following load:

1. Hot water Boiler A.O. Smith BT250 920 CFH
2. 116 gas ranges each 50 CFH
3. 4 Commercial Driers each 100 CFH
4. Heating Weil McLain BGL 1388S (2) each at 28.5 GPH
OIL Input 4113 MBH

Please make survey and let me know if service can be provided."

The revised load letter to the utility, dated April 28, 1987, states:

"The following is a revised gas load and distribution setup for said building. Please expedite service metering layout.

1. Heat, temperature control rate: 2 boilers each 4113 CFH input.
2. Hot water and gas driers: constant gas rate: 920 CFH + 4 driers each 100 CFH.

(continued...)

that the utility put the dryers and water heaters on the same meter because "it wrongly abided by the second [sic]⁴ revised load letter which states, 'hot water and gas dryers: constant gas rate.'"⁵ In addition, he claims, that in wrongly complying with the revised load request, the utility failed to set a separate meter for the water heaters, failed to advise complainant that SC-3 was far more expensive than SC-6B for hot water, and failed to advise complainant that SC-6B⁶ has a minimum charge of \$600 per month for use of 1,250 therms or less.

Mr. DiCeglio takes issue with the Commission's statement that complainant "may have decided not to go ahead with its request for interruptible water heating service because of the higher purchase cost of the appropriate interruptible gas water heating equipment or because expenses related to other building services were more pressing." He argues that there is no record that complainant ever requested interruptible water heating service, or was aware (or advised by the utility) of the

³(...continued)

3. Tenant gas ranges for cooking: 116 apartments each 50 CFH."

⁴ There was no "second" revised letter. Mr. DiCeglio apparently refers to complainant's second load letter, which was the revised load letter.

⁵ In support of this assertion, the rate consultant cites 2 utility memoranda of June 8 and July 13, 1987, which refer to rates SC-1, SC-2, and SC-6 for cooking, heating, and hot water, as evidence of Brooklyn Union's wrongful compliance with the revised load letter. He notes that while dryers are not mentioned, the utility must have intended to assign the hot water and dryers to the same rate because none of the appliances that are referred to qualified for SC-2, the correct rate for dryers.

⁶ The minimum charge for the other temperature controlled rate, SC-6A, is approximately \$200 per month for use of 10 therms or less, which is more economical for customers who use little or no gas during the warmer months of the year. SC-6A, the small volume temperature controlled rate, is applicable where the total rated hourly Btu input to supply the customer's gas-fired equipment is 1,000,00 Btu per hour or greater. SC-6B is applicable where the total rated hourly Btu input to supply the customer's gas-fired equipment is 2,500,000 Btu per hour or greater.

cost benefits⁷ of using the appropriate interruptible boiler for space and water heating. The consultant argues that if the utility had taken into consideration the importance of the Commission's concern for gas conservation and properly advised Somerset Management of the least expensive available rate, complainant would have selected the interruptible rate for heat and hot water service to be provided by the interruptible boilers, through hot water coils.⁸ Mr. DiCeglio also argues that the finding that there is no evidence the dryers were attached to the water heating meter is not relevant because the load letters submitted by complainant's engineer specify that the dryers were part of the requested gas service. He thus concludes that the utility was required to install a separate gas meter to accommodate the dryers.

Finally, Mr. DiCeglio argues that the standard by which Brooklyn Union's action must be judged is whether it advised complainant "fully", which the Commission found in another case involving the utility's responsibility to assist a customer to select the most favorable rate.⁹

DETERMINATION

The central issue on rehearing is Mr. DiCeglio's claim that Brooklyn Union did not assist complainant to select the proper equipment to qualify for the most favorable available rate when service was initiated. In our prior determination, we found that the utility correctly responded to complainant's service request of February 10, 1986 by presenting complainant with a service layout, dated October 9, 1986, showing the load configuration required to obtain service on the least expensive

⁷ Mr. DiCeglio states the savings would be from \$10,000 to \$11,000 per year for the life of the building and that, as of March 1997, complainant would have saved approximately \$100,000.

⁸ Water supplied by a water tank connected to an interruptible boiler with heating coils is heated as it passes through the coils.

⁹ Case 90-E-0996, In the Matter of the Dispute Between Bronxwood Home for the Aged, Inc. and Consolidated Edison Company of New York, Inc., filed in Case 26358, Opinion No. 92-9 (issued April 16, 1992).

rates,¹⁰ including space and water heating on the interruptible rate, and that it was clearly complainant's decision whether to accept the service layout as the basis for proceeding with the necessary work. We therefore found that the utility properly advised complainant of the most beneficial rate for space and water, consistent with the several Commission determinations that have addressed the scope of the utility's duty to assist a customer to select the most advantageous rates,¹¹ and assigned the separate rates for space and water heating in accordance with complainant's request. Mr. DiCeglio's arguments on rehearing are unpersuasive.

Specifically, Mr. DiCeglio's position overlooks the fact that complainant's consulting engineer was aware of the utility requirement of dual-fuel equipment, stated in Special Provision (b) of the SC-6B tariff, to qualify for interruptible service, as evidenced in his original letter of February 10, 1986.¹² The available utility records support the conclusion that he explicitly requested the "constant gas rate", or firm rate, for hot water service in his revised load letter of April 28, 1987 after receiving the utility's October 9, 1986 service layout, which offered both space and water heating service on the interruptible rate, SC-6.¹³ Mr. DiCeglio has offered no

¹⁰ Revised service layouts of April 21 and July 8, 1987 are slightly different but offered the same advantageous rate assignment.

¹¹ See 91-G-1156, Appeal by Bradshaw Management of the Informal Decision in Favor of LILCO, Commission Determination (June 10, 1994) and 93-G-0122, Appeal by BFN Realty Corp., Plaza Carriers, Jamknits Associates, Metro Shipping & Warehousing, and Star City Sportswear of the Informal Decision in Favor of The Brooklyn Union Gas Company, Commission Determination (May 23, 1996).

¹² See footnote 3.

¹³ The available records also contain handwritten utility notes of October 1987, which show that complainant's space heating boilers were not equipped to provide water heating service on an interruptible basis. Two notes, apparently from the same utility representative (Jerry), indicate that he received confirmation from another utility representative (Walter Mollen) that the space
(continued...)

evidence that the consulting engineer was unaware that water heating was eligible for the SC-6 rate¹⁴ or that he was not advised of the most economical rate for space and water heating in the course of his interaction with the utility. The record, on the other hand, clearly suggests that he was.¹⁵ Given this evidence of the consulting engineer's familiarity with the interruptible rate and the evidence that the utility provided the best service layout to the customer on October 9, 1986, we cannot conclude that the utility was deficient here.

Mr. DiCeglio's argument that complainant wished to use oil in combination with gas in order to save on winter billing and that the revised load request made by complainant's engineer only changed the type of equipment to be used for water heating (not the type of gas service requested), is not clear, particularly in light of his assertion that there is no record that complainant ever requested interruptible water heating service. The revised load letter states that the heat was to be on the "temperature control rate" and the hot water and gas

¹³(...continued)
heating boilers lacked heating coils, and proceeded to remove the water heating service from the temperature controlled gas allocation and place it on the firm rate. Complainant could have had the water heating on SC-6 with the space heating had work been performed to install, or connect existing heating coils, on the dual-fuel equipment to allow water heating use, but, as the handwritten utility notes show, this was not done.

¹⁴ Although, as Mr. DiCeglio correctly argues, there is no record that complainant explicitly requested interruptible water heating service, we find that the consulting engineer's statement in his original February 10th service request- that complainant was interested "in using oil for the boilers in combination with gas to save winter fuel bills"- was reasonably interpreted by us to mean that complainant wished to save on water heating as well as space heating. In any event, the utility's first service layout made this evident.

¹⁵ It should be noted that a consulting engineer's role where new service is requested for a building that is under construction is that he initiates the service request and assures that service is provided in the most efficient manner possible. The utility rates are one of several factors to be considered. The consulting engineer's efforts to obtain service are carried out in coordination with the client's architect and project manager.

dryers were to be on the "constant gas rate", which can only be read as an unambiguous request for firm rate service. Once the utility has properly advised an applicant of the most beneficial service rates available and the applicant selects the rate, the utility must comply with the request, unless it is unable to for reasons of safety or because the requested service violates the utility's tariff. In this case, no unsafe piping condition was reported when the gas was turned on and service has been provided in accordance with Brooklyn Union's tariff.

We do not find that Mr. DiCeglio's reliance on Bronxwood, where the Commission found that Con Edison was required to advise the customer fully regarding the most favorable rates, supports his assertion that the obligation to assist a customer in selecting the most favorable rate required the utility to advise complainant of the cost benefits of using the appropriate interruptible gas equipment for heating and hot water on SC-6 compared to SC-3 service. While such additional information may be useful, we find that it is sufficient to meet the utility's responsibility to assist the customer if it simply advised the customer of the best rate and configuration, where the benefit is clear. In Bronxwood, the customer alleged that the utility withheld essential information which led the customer to transfer from SC-5 (interruptible gas service) to SC-2 (general commercial gas service). The Commission noted that Con Edison did not explain why the customer was not informed, during ongoing consultations, of the imminent rate change that was being contemplated and would again make SC-5 more economical than SC-2¹⁶ and concluded that, by not providing this information, the utility failed to fully advise the customer of the most favorable

¹⁶ Historically, Con Edison's interruptible service rate is less expensive than SC-2. In March 1980, SC-2 became less costly as a result of the approval of a new rate design. In order to avoid a migration of interruptible service customers to SC-2, thereby making it difficult for the utility to ensure adequate gas service to firm rate customers, a new rate for SC-5 was subsequently approved. In October 1980, just two months after the customer's account was transferred to SC-2, the interruptible rate again became less expensive.

rates. It is, thus, clear that the Commission found that Con Edison did not fully advise the customer because it failed to provide available information that was necessary for the customer to select the appropriate rate. Here, the available utility records do not show that Brooklyn Union withheld any information showing that the interruptible rate was the most beneficial rate for space and water heating. Rather, the utility service layout presented to complainant's consulting engineer, dated October 9, 1986, provided the most advantageous manner of taking service. As noted above, Mr. DiCeglio has not presented any evidence from the consulting engineer to refute the utility's position that it properly advised him of the most beneficial rate for space and water heating service when it submitted the October 1986 service layout indicating this service could be provided on SC-6.

The point of the rate consultant's argument that the utility failed to inform complainant that a minimum charge of approximately \$600 per month is applicable under SC-6B, is not clear, particularly in light of statements previously made by him in response to the hearing officer's decision. In reply to a recommendation by the hearing officer in his decision that complainant contact the utility to determine its eligibility for SC-6A, Mr. DiCeglio rejected this advice by letter dated April 29, 1994, stating that SC-6A would be more expensive than SC-6B and that complainant's usage and boilers would violate the SC-6A tariff.

In addition, we note that Mr. DiCeglio's assertion that the dual-fuel boilers "have" heating coils for interruptible water heating conflicts with the available records.¹⁷ In response to the rate consultant's inquiry, Brooklyn Union advised him, by letter dated August 8, 1991, that an inspection found the interruptible boilers did not appear to have coils for heating water and advised him that if his client wished to install or connect coils for hot water, the customer's contractor should

¹⁷ Mr. DiCeglio states that the interruptible boilers "have hot water coils in them", which we read as indicating that the boilers have always had heating coils.

first file the required paperwork with the utility's Gas Utilization Group in order to make the proper connection between the space heating and water heating equipment. By letter dated August 15, 1991, Mr. DiCeglio informed Brooklyn Union that he was in contact with Mr. Eshaghian, the building owner, to engage "a contractor to connect the gas water heaters to the interruptible boilers." Brooklyn Union replied, by letter dated August 19, 1991, that the installation/connection of the coils must be completed precisely as outlined in the prior utility letter and that failure to do so could cause the tenants to be without hot water or subject the owner to additional charges applicable under the SC-6B tariff. There is no indication that any work has been done to install or connect any existing heating coils since that time.

Regarding Mr. DiCeglio's assertion, previously made on appeal, that Brooklyn Union failed to install separate meters for the water heaters and dryers, we find that no evidence has been offered to show that these appliances were attached to the same meter when service was initiated on November 20, 1987. The utility service report for that date, made in the ordinary course of the company's business, indicates that only complainant's 4 water heaters were connected to the water heating meter. We have no reason to conclude that the utility representative's finding is other than as he reported.

Finally, we have considered and rejected Mr. DiCeglio's request that a formal hearing be held on this matter. We believe that the record is sufficient to reach the conclusion we have here and that a formal hearing would not bring to light any facts or evidence that are likely to alter this conclusion. For these reasons, we decline to order a formal hearing in this matter.

In order to assure that all aspects of this case have been properly addressed, staff has thoroughly reviewed the entire complaint file. We determine that the utility properly assisted complainant to select the most beneficial service rate for space and water heating and assigned separate rates for each service in

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accordance with complainant's request. Therefore, we deny complainant's rehearing petition and affirm our prior determination of February 19, 1987.