

Agenda Date: 6/7/10
Agenda Item: VIIC



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

KENDRA SANDERS,
Petitioner

v.
JERSEY CENTRAL POWER & LIGHT
COMPANY,
Respondent

ORDER OF EXTENSION

BPU DOCKET NO. EC09020130U
OAL DOCKET NO. PUC02672-09S

(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on March 26, 2010. By previous Order of Extension, the period for issuing a Final Decision was extended to June 24, 2010. Prior to that date, the Board requests a 45-day extension of time for issuing the Final Decision in order to allow for a full review of the record including extensive exceptions filed by Petitioner and a reply to exceptions filed by Respondent.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until August 9, 2010.

DATED: 6/7/10

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

JEANNE M. FOX
COMMISSIONER

JOSEPH L. FIORDALISO
COMMISSIONER

ELIZABETH RANDALL
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ATTEST:

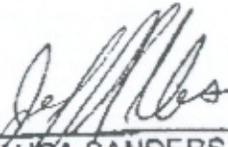
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

Date Board mailed Order to OAL: 6/8/10

cc: Service List Attached

DATED: 6/8/10


~~JEFF SANDERS, Acting Director~~
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 6/9/10

Date Board mailed executed Order to Parties: 6/9/10

KENDRA SANDERS

V.

JERESEY CENTRAL POWER & LIGHT COMPANY

**BPU DOCKET NO. EC09020130U
OAL DOCKET NO. PUC02672-09S**

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gc



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CMS
BESLOW
RPA
KIRSCHBAUM
~~FORD-WILLIAMS~~

INITIAL DECISION

OAL DKT. NO. PUC 02672-09
AGENCY DKT. NO. EC09020130U

KENDRA SANDERS,

Petitioner,

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,

Respondent.

Michael D. Mirne, Esq., for petitioner, Kendra Sanders

Michael J. Connelly, Esq., for respondent, Jersey Central Power & Light Company
(Morgan Lewis & Bockius, LLP, attorneys)

Record Closed: December 21, 2009

Decided: March 22, 2010

BEFORE ELIA A. PELIOS, ALJ:

STATEMENT OF THE CASE

Kendra Sanders ("petitioner") contends she was improperly deemed by Jersey Central Power & Light ("JCPL" or "respondent") to have a diversion of service, or a shared metering of service, among dwelling units within premises she owned.

PROCEDURAL HISTORY

Petitioner filed a Petition with the Board of Public Utilities on February 11, 2009. JCPL received the petition on March 6, 2009, and filed an Answer to the Petition, which was received by the Board on March 27, 2009.

The Board transmitted the matter for a formal hearing to the Office of Administrative Law, where it was filed on April 21, 2009. A hearing was held on November 16 and 23, 2009. The record closed on December 21, 2009, with the filing of post-hearing briefs.

STATEMENT OF FACTS

Petitioner resides in a three story home with two rental units. The property is located at 704 Greens Avenue in Long Branch, New Jersey. One of the rental units was occupied by a tenant named Jessica Signorello (hereinafter known as "Signorello"). Signorello reported suspected power diversion to the Respondent. JCPL investigated the matter and concluded that a shared metering diversion of service was in existence at the property, and advised the Petitioner that she would be responsible for an additional \$577 in electrical service charges based upon the findings of the investigation. The Petitioner conducted her own investigation, which contradicted the findings of the Respondent's investigation. Subsequently, the Petitioner filed claims with the New Jersey Board of Public Utilities and the Office of Administrative Law. The preceding statements are not in dispute and are hereby **FOUND as FACT**.

Peter Bennett

Peter Bennett (hereinafter known as "Bennett") is a home inspector hired by petitioner to conduct an inspection of the home and complete a report memorializing his findings (P-1). He concluded that other than 7 chandelier-style 25 Watt bulbs, there were no items outside Signorello's apartment which were hooked up to the meter servicing apartment 2. He noted that the bathroom was not well insulated and that the

bathroom heater was on a 240 Volt double-breaker, which is usually reserved for items which consume a lot of power. He concluded that due to the location of the bathroom, on several exterior walls and situated above open air over the porch on the first floor, the electrical baseboard heater in the bathroom would require a significant amount of usage. On cross examination, Bennet admitted that he had been given a limited set of instructions upon which to base his report. He further acknowledged that the removal of a circuit breaker would not require the rewiring of the house, though he gave his opinion that no rewiring had been performed. Bennet explained that the house was serviced by three meters, each serving a separate sub-panel. Bennet, stated that the hot water heater was not on the meter of apartment #2, or on any meter, as the hot water heater was fueled by natural gas.

Michael Richison

Michael Richison ("Richison") is another tenant of petitioner's residing at the subject property. Richison noted that the stairwell containing the light bulbs and fixtures in question had windows and received significant external natural lighting. Consequently, the light bulbs would only need to be used in the evening. Additionally, the lamps were individually switched and therefore each tenant could turn off his or her own lamp when they wished.

Richison added that the heat was shut off about May 1 of each year, and recounted an experiment he conducted with Signorello wherein the breakers in Signorello's electrical subpanel were turned on and off to determine whether they would have any effect on the porch lamps. This yielded a conclusion that the porch lights were independent of Signorello's sub-panel.

Kendra Sanders

Petitioner testified that Signorello was a problem tenant with whom Petitioner had an oral lease, her customary method of doing business with her tenants. Their agreement provided that Ms. Signorello was responsible for the hallway lights and the

bathroom baseboard electric heat as part of her financial responsibility for the electricity serving Apartment 2.

She also stated that there was no other source of electric usage external to Apartment No.2, which was on the electrical service panel and which would register on the electric service meter for Apartment No.2.

Petitioner contacted, the JCPL soon after receiving a report regarding the shared metering investigation, and recounted in detail her phone calls and efforts to correct the situation by telephone with JCPL employees and management.

Amy Gibbs

Amy Gibbs, Revenue Protection Investigator for JCPL, made an appointment with Jessica Signorello to conduct a shared metering investigation. This included the removal by a technician of the meter serving the Premises for testing and the replacement of such meter with a different meter. The removed meter was tested by JCPL and found to be operating correctly within calibration and regulatory specifications.

On May 7, 2008, Ms. Gibbs conducted an on-site shared meter investigation of the subject property. She was accompanied and assisted by Ms. Arlene Kohler a JCP&L Meter tester, Second Class. The two were met by Signorello, the tenant in apartment 2. She informed Gibbs that her landlord, petitioner, was responsible for heat and water for Apartment No. 2 and that Signorello was responsible for the electric for the apartment. There was no written lease between Ms. Signorello and petitioner. Ms. Gibbs knocked on the door of petitioner's apartment on the premises but received no response.

Gibbs and Kohler performed a shared meter investigation which entailed making observations of apartment 2 and of the premises, including the observing of any appliances in use within apartment 2.

Ms. Gibbs collected data for a load analysis. Among the observations noted was the fact that the bathroom for apartment 2 was heated by an electric baseboard heater. She also observed the electrical panel box serving apartment 2. Gibbs observed a series of breakers within the electrical panel box serving apartment 2, including two double-breakers.

Gibbs, with Kohler's assistance, performed a series of tests, including a meter test, a continuity test and a breaker test. This involved the making of observations regarding the electrical fixtures and appliances that worked or did not work when the individual breakers within apartment 2 were turned on or off.

According to Gibbs, during the breaker test, Kohler observed that the meter dial slowed down considerably when the upper most double-breaker was turned off. Though Gibbs was not able to determine what appliances or other electric consuming devices the upper most double-breaker was used to serve. The lower double-breaker was determined to serve the electric baseboard heater in the bathroom. Gibbs concluded that the upper most double-breaker was not serving anything in apartment 2 and advised Signorello to leave it turned off as a way to determine what it was serving.

Gibbs and Kohler, determined that the hallway lights were being served through a breaker in the electrical panel box serving the apartment 2, including one porch light near the doorway to the Premises, although on cross examination Gibbs did have trouble identifying a specific porch light serviced by this meter. Gibbs determined that the usage associated with the upper most double-breaker being registered on the meter serving apartment 2 was not usage within apartment 2, and was not accounted for by the load analysis.

Gibbs did not have access to the basement or to petitioner's apartment, although a subsequent phone call from Signorello led her to hypothesize that the additional usage on the meter serving apartment 2 might be related, in part, to the operation of the furnace supplying heat in the house.

After concluding the inspection, Gibbs performed a load analysis incorporating the data obtained during the investigation. This led her to conclude that the evidence of estimated usage for appliances and other electrical usage inside apartment 2, including the baseboard heater, was less than the actual amounts registering to the meter serving apartment 2 and that this was consistent with a shared meter condition. She determined that petitioner would be responsible for an additional \$577 as a result of the diversion (this figure was adjusted and upon considering seasonal fluctuations Gibbs has revised, and JCPL adopted, \$371.69 as the amount attributable to petitioner as a result of the diversion).

Arlene Kohler

Ms. Kohler, who is a meter tester, 2nd class, for JCPL, also was present at the May 8, 2008 inspection. She also observed the existence of a second double breaker in the panel box servicing apartment 2. During the breaker test, she remained downstairs observing the meter response to Gibbs's turning on and off of the various breakers. She observed the meter slowing down in response to what she understood to be Gibbs's turning off of the upper double breaker in the panel box.

FINDINGS OF FACT

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I FIND the following **FACTS**.

It is not disputed by the parties that a shared metering situation exists as to the hallway lights in the common area of the building. What is at issue is the knowledge or consent of the tenant, Jessica Signorello. Ms. Signorello was not present to testify at the hearing. Testimony was presented that petitioner only utilized to this point oral leases with her tenants, but that her tenants were aware of the division of electrical responsibilities. On this point the testimony of petitioner appears to be credible, and is

buttressed by the testimony of Mr. Richison, a current tenant in the building who also was present during Ms. Signorello's tenancy, discussed the situation with her and had knowledge of Signorello's knowledge of the situation. There is also evidence that the relationship between petitioner and Signorello was extremely acrimonious. While JCPL argues that Ms. Signorello's credibility is not at issue, the tenor and nature of the relationship between Signorello and petitioner is certainly relevant in attempting to assess the issue of knowledge. Accordingly, I FIND that a shared metering condition existed, as to the lights in the hallway or the subject property. I further find that Signorello knew of and consented to that situation upon the commencement of her tenancy and electrical service.

As to the second double breaker in the electrical panel box servicing apartment 2, the witness testimony appears to be in direct conflict. On behalf of JCPL, two witnesses testify that they observed two double breakers in the panel box; that when there was no apparent source of electrical current in the apartment the meter servicing the apartment still registered usage; and that the meter slowed down considerably when the upper most double breaker was turned off. Petitioner testifies that there is no double breaker in the panel box for apartment 2, and there never was one. She denies having removed a second double breaker. It is agreed that the "other" double breaker services the baseboard heater in the apartment 2 bathroom. On behalf of petitioner, Mr. Bennett testified that he observed only one double breaker in the panel box on July 28, 2008, and included a photograph consistent with that statement in his report.

In order to resolve the inconsistencies, the credibility of the witnesses must be determined. Credibility contemplates an overall assessment of the story of a witness in light of its rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F. 2d 718 (9th Cir. 1963).

In order to assess credibility, inferences may be drawn concerning the witness' expression, tone of voice and demeanor. MacDonald v. Hudson Bus Transportation Co., 100 N.J. Super. 103 (App. Div. 1968). Additionally, the witness' interest in the outcome, motive or bias should be considered.

A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura- Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

I found Mr. Bennett to be a credible witness and his testimony believable. However by his own testimony his inspection and report were limited to a specific set of instructions. Additionally, his observations of the electrical panel box, while in my opinion were testified to truthfully, were reflective of the situation on the date of his visit, July, 28, 2008. What is at issue is the state of conditions at the time of Ms. Gibbs and Ms. Koehler's visit on May 7, 2008. Given the length of time between the visits, Mr. Bennett's testimony, however credible, is of limited value in determining what conditions existed two and one half months prior.

Of the remaining three witnesses who testified as to the existence of a second double breaker in the panel box, I did not find anything in any of their testimony to be inherently unbelievable, nor did I note anything in any of the witnesses' tone, expression or demeanor to lead me to conclude that any was lying. However the testimony is clearly inconsistent and must be resolved.

Petitioner argues that it does not make sense that petitioner would go to the lengths and expense she has undertaken to avoid a \$373 bill she legitimately owes. While that may be, the alternative would then be that Ms. Gibbs and Ms. Koehler, two employees of JCPL who do not appear to directly benefit from the outcome of the matter, agreed to both give false testimony under oath as to the existence of the second double breaker, or both shared the same mistaken recollection of their inspection. These alternatives hardly seem any more likely. In fact, when considering the respective interests in the outcome of this situation, petitioner's interest, despite counsel's protestations, appear to be greater than those of two employees of the utility, however small the amount in dispute may be. It is not just the amount in question but

also the impact on the ability of petitioner to do business with her tenants the way she has for years with oral as opposed to written leases and the need to provide notification and verification of tenants notice to JCPL before service can be set up in anyone's name other than petitioner's to service apartment 2. Petitioner's apparent greater interest in the outcome tends toward a conclusion that the version of events supplied by Gibbs and Koehler is more likely the accurate version.

Accordingly, I FIND that Ms. Gibbs and Ms. Koehler did observe a second double breaker in the electrical panel box servicing apartment 2; that the turning on and off of the breaker impacted the meter measuring the electrical consumption tied to the account of apartment 2, and that the breaker was not servicing any appliance or outlet to apartment 2, as demonstrated by the extensive testing they conducted. It is of no moment that they could not determine what was being serviced in the house, or that they hypothesized what it could be. They clearly demonstrated that whatever the upper double breaker was servicing, it was not in apartment 2.

CONCLUSIONS OF LAW

N.J.A.C. 14:3-7.8 governs the alleged diversion of the services of a public utility. An electric utility, "shall include in its tariff provisions ensuring that tenant-customers shall not be required to pay for service supplied outside their premises without the tenant-customers' consent." N.J.A.C. 14:3-7.8(b). A "diversion" is defined as, "an unauthorized connection to pipes and/or wiring by which utility service registers on the tenant customer's meter although such service is being used by other than the tenant-customer of record without his or her knowledge or cooperation. The unauthorized connection must not be apparent from the premises." N.J.A.C. 14:3-7.8(a). When a diversion is found, and the beneficiary of the diversion can be ascertained, and "the beneficiary is currently a customer of the utility on another account, the utility shall bill that beneficiary for the amount the utility estimates is attributable to the diversion plus all related expenses incurred by the utility in accordance with the utility's tariff[.]" N.J.A.C. 14:3-7.8(g)2i. The "beneficiary" is the person, corporation or other entity financially benefiting from the service. N.J.A.C. 14:3-7.8(a).

In the current matter, the record demonstrates, by a preponderance of the evidence that a diversion of service provided by JCPL to Jessica Signorello at the subject premises did occur, and that the beneficiary of this diversion was petitioner. Petitioner argues that the burden of proof in this matter should be shifted to JCPL, however respondent correctly notes that no provision for such shifting exists under applicable law.

Accordingly, I **CONCLUDE** that petitioner is the beneficiary of a shared metering situation on the property she owns, and therefore is responsible for the amount JCPL estimates to be "attributable to the diversion plus all related expenses incurred by the utility in accordance with the utility's tariff," as contemplated by N.J.A.C. 14:3-7.8(g)2i.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner's petition be **DISMISSED**. Petitioner is **ORDERED** to remit payment to JCP&L for \$371.69, which JCPL estimates is the amount equal to the diversion.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 22, 2010

DATE

Date Received at Agency: *3/26/10*

Date Mailed to Parties:

[Handwritten Signature]

ELIA PELIOS, ALJ

March 23, 2010

[Handwritten Signature]

March 23, 2010

/mamf

APPENDIX

LIST OF WITNESSES

For Petitioners:

Peter Bennett, A Full House Inspection Co. LLC
Michael Richison, Tenant
Kendra Sanders, Petitioner

For Respondent:

Amy Gibbs, JCPL Revenue Protection Investigator
Arlene Kohler, JCPL Meter Tester, 2nd Class

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

- P-1 Inspection Report
- P-2 Customer Interaction Center Screen
- P-3 Copy of Change Contact Information Screen
- P-4 Revenue Protection Services Load Count Report
- P-5 Email Communication
- P-6 JCPL Diversion Investigation Report
- P-7 Letter from All Quality Electric
- P-8 Light Bulb
- P-9 Photograph
- P-10 Letter from JCP&L to petitioner
- P-11 Petitioner's Telephone Bill.
- P-12 Photograph
- P-13 Long Branch Police Department Call Report

- P-14 Baseboard Heater specifications
- P-15 Photograph
- P-16 Petitioner's Telephone Bill

For Respondent:

- R-1 Diversion Investigation Request
- R-2 Letter from JCP&L to petitioner
- R-3 Letter from JCP&L to tenant
- R-4 Load Study
- R-5 Meter Work Notification
- R-6 Cost Estimate
- R-7 Detailed Statement of Account
- R-8 Customer Interaction Center screen shot
- R-9 Customer Interaction Center screen shot