

Date Board mailed Order to OAL: 3/20/14

cc: Service List Attached

DATED: 3/20/14



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 3/21/14 emailed

Date Board mailed executed Order to Parties: 3/21/14

GASPARE CAMPISI OF GASPARE'S GOURMET

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC13020175U

OAL DOCKET NO. PUC 5301-13

SERVICE LIST

**Gaspare Campisi
Gaspare's Gourmet
501 Zion Road S-20
Egg Harbor Township, New Jersey 08234**

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CMS
Bestow
DAG(2)
RPA
Tord-Williams
Lambert
Haynes
Lee-Thomas
deprose



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

23

filed 12/20/13

INITIAL DECISION

OAL DKT. NO. PUC 5301-13

AGENCY DKT. NO. EC13020175U

**GASPARE CAMPISI OF
GASPARE'S GOURMET,**

Petitioner,

v.

**ATLANTIC CITY ELECTRIC
COMPANY,**

Respondent.

Gaspare Campisi, pro se

Pamela Scott, Esq., Assistant General Counsel, for respondent

Record Closed: November 1, 2013

Decided: December 13, 2013

BEFORE DAMON G. TYNER, ALJ:

STATEMENT OF THE CASE

Petitioner disputes the amount of billings for electric service delivered to his restaurant, Gaspare's Gourmet, during the period of July 2012, which totaled \$8,764.13. For the reasons discussed below, the claim asserted by petitioner is **DENIED**.

PROCEDURAL HISTORY

The petitioner requested a hearing and the matter was filed at the OAL on April 18, 2013, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on November 1, 2013, and the record closed.

FACTUAL DISCUSSION

Petitioner is the owner and operator of Gaspare's Gourmet, a restaurant located in Egg Harbor Township, New Jersey. The respondent provides electric utility service to his restaurant.

Respondent provided, and Campsi paid for, electrical service for a number of years, including the period in dispute. The instant dispute arises out of billings received for July 2012, but actually date back to issues presented by a faulty meter which was removed in October 2011. In October 2011, respondent removed a meter at the petitioner's place of business, after it determined that it was malfunctioning and not recording the correct amount of usage.

As time passed, a freak weather incident occurred in southern New Jersey, particularly Atlantic County, in July 2012 which was identified by the National Weather Service as a "Derecho," which are known to be straight line winds. The Derecho caused power outages throughout the region. In petitioner's case, his restaurant was without electrical service for five days in July 2012.

As a result of the Derecho, respondent was unable to read the petitioner's meter in July 2012. Therefore, they provided him with a bill for services based upon an estimated reading, as is their practice. It should be noted that petitioner received an actual reading for June 2012, August 2012, September 2012, and October 2012. Initially, petitioner was billed \$521.60 due July 31, 2012, \$598.71 due August 30, 2012, and \$537.80 due on October 1, 2012. Each invoice indicated that the billings were estimated. After the readings were reconciled, respondent provided petitioner with an

adjusted invoice which showed that he owed the sum of \$8,764.73 due on October 31, 2012.

Respondent produced two witnesses, Marianne Murphy, a Senior Analyst in the Regulatory and Executive Customer Relations Department and Robert Polk, a Senior Associate Engineer in the Meter Department.

Marianne Murphy

Ms. Murphy testified that she has been in the billing department for eight years. She is familiar with the petitioner's account. Ms. Murphy was aware that petitioner's meter was replaced in October 2011.

In this matter, Ms. Murphy indicated that petitioner got an actual reading in June, August, September, October, and November of 2012. The only month that he received an estimated reading was in July 2012. She testified that the investigation was initiated in October 2012, because it is the respondent's practice to check the accuracy of the usage for a couple of months after the month complained about. She further testified that she forwarded invoices to petitioner that clearly indicated that the bills he was receiving were estimated bills, which may be adjusted in the future. In October 2012, she sent him an adjusted bill, based upon the actual usage which was determined by comparing the June 2012 actual reading to the August 2012 actual reading. As a result, the usage for July 2012 was accurately measured.

For comparison, in July 2012, petitioner used 507.77 kwh per day as compared to 509.86 kwh per day in July 2013, an insignificant difference. Petitioner's costs were actually cheaper in 2013, because even though his usage was higher, because the rate structure was slightly different, according to Ms. Murphy.

After receiving petitioner's additional complaints, Ms. Murphy indicated that the matter was forwarded to the Meter Department to test the accuracy of the meter.

Robert Polk

Robert Polk is a Senior Associate Engineer with the respondent. He has an Associate's Degree in Electrical Engineering from Camden County College and a B.S. in Applied Science from Thomas Edison State College. He has been employed with respondent for fifteen years.

Mr. Polk testified that he removed the petitioner's meter in November 2012 and manually tested it at respondent's laboratory. The tests are repeated several times to minimize human error. He indicated that the meter was 99.958 percent accurate. (R-3). He further testified that the state regulations allow a deviance of plus or minus 2 percent. In this matter, Polk testified that he was confident in the procedures and that this device, which was a solid state device, was not affected by the Derecho storm of July 2012.

Mr. Polk testified that the meter met the standards of the American National Standard's Institute and performed accurately when tested.

On cross-examination, he testified that there was simply no evidence to suggest that the meter was not functioning properly in July 2012. With respect to the meter which was removed in 2011, Mr. Polk testified that it was not sent back into the population since it was found to be malfunctioning. (R-4). In such circumstances, the meters are retired.

Based upon the factual testimony, I make the following **FINDINGS**:

1. I **FIND** that the respondent was compelled to issue an estimated bill for three months until an investigation could confirm the proper amount to bill the petitioner.
2. I **FIND** that the respondent performed an actual meter reading in June 2012, in August 2012, and the months subsequent thereto.
3. I **FIND** that the respondent was able to accurately determine the reading for July 2012 based on the information in its possession.

4. I **FIND** that the action taken by respondent to issue an estimated bill until such time that the investigation was completed was appropriate.
5. I **FIND** that the testing performed on the petitioner's meter which showed that the meter was 99.958 percent accurate was well within the regulated margins of deviance and was functioning properly.
6. I **FIND** that the respondent's corrected bill dated October 31, 2013 of \$8,764.73 was appropriate.

CREDIBILITY FINDINGS

I listened to the testimony of both Marianne Murphy and Robert Polk. Both were experienced employees of the respondent, who had handled similar complaints in the past. In the case of Ms. Murphy, she testified that the petitioner's complaint was lacking because she had actual readings for the month of June 2012 and the month of August 2012. As a result, the computer was able to accurately determine how much electric he used in July 2012. She easily defended her position on cross-examination by the petitioner with well reasoned responses supported by the usage statements and other supporting documentation. I **FIND** that her testimony was credible.

Similarly, I **FIND** that Robert Polk's testimony was credible. Mr. Polk holds a B.S. in Applied Science and has been employed in the Meter Department for the respondent for fifteen years. He testified that the meter in question was 99.958 percent accurate. He further testified that the evidence did not support a finding that the meter malfunctioned during the Derecho. Mr. Polk based his testimony on the testing of the actual meter and the solid state technology which the meter possessed.

LEGAL DISCUSSION

Petitioner did not argue that he did not owe respondent anything. He merely guessed that seventy percent of the invoiced bill would be appropriate. In essence, he is doing what he alleged the respondent did, when they calculated his electric bills, estimate or guess. However, in the respondent's case, they were actually able to

provide an exact amount of the petitioner's usage and support it with testimony that the meter was working properly. Petitioner was unable to offer any testimony or evidence that would tend to show that the respondent billed him inappropriately.

Respondent relied upon N.J.A.C. 14:3-4.6 in support of its action. That regulation states in pertinent part:

(a) ...No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

* * *

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

* * *

2. The meter failed to register at all; or

3. The circumstances are such that the customer should reasonably have known that the bill did not reflect the actual usage.

In this case, the uncontroverted proofs show that the meter reading was initially estimated. However, petitioner received bills that advised him that the bills were estimated and that an adjusted bill would be sent at a later date. Therefore, I **CONCLUDE** that the miniscule amount of petitioner's monthly bill over the period between July through October 1, 2012, should reasonably have caused petitioner to know that the bills did not reflect actual usage and that the bills would be adjusted appropriately. I **FURTHER CONCLUDE** that the respondent accurately calculated the usage from actual readings conducted in June 2012 and August 2012. Lastly, I **CONCLUDE** that the meter was functioning properly pursuant to the tests conducted by respondent.

The action of respondent must be **AFFIRMED**.

ORDER

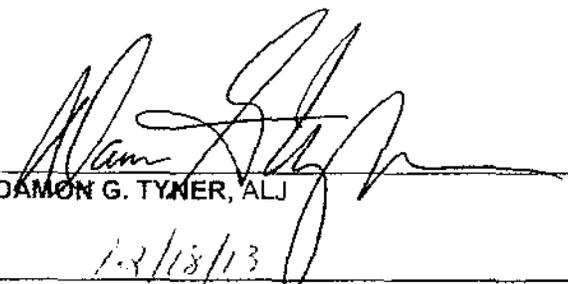
I **ORDER** that respondent's action assessing petitioner \$8,764.73 for electrical service utilized between July through October 1, 2012, be **AFFIRMED**.

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, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 13, 2013
DATE


DAMON G. TYNER, ALJ

Date Received at Agency:

1-2/18/13

Date Mailed to Parties:

1-2/18/13

lam/ds

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Gaspare Campisi

For Respondent:

Marianne Murphy, Senior Analyst
Robert Polk, Senior Associate Engineer

EXHIBITS

For Petitioner:

P-1 Letter from Atlantic City Electric to Gaspare Campisi, dated January 15, 2013

For Respondent:

R-1 Usage Statement

R-2 Invoices from July 2012 through October 31, 2012

R-3 EMT Device Inquiry report, dated March 26, 2013

R-4 AMI Device Management report, dated October 30, 2013