



Agenda Date: 11/16/15
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

SALVATORE MUFALLI & CYNTHIA SMITH,)	ORDER ADOPTING
Petitioners,)	INITIAL DECISION
)	
v.)	
)	
ATLANTIC CITY ELECTRIC COMPANY,)	BPU Docket No. EC14121442U
Respondent.)	OAL Docket No. PUC 8184-15

Parties of Record:

Ellyn Epstein, Esq., on behalf of Petitioners, Salvatore Mufalli and Cynthia Smith
Pamela J. Scott, Esq., on behalf of Respondent, Atlantic City Electric Company

BY THE BOARD:¹

The within matter is a billing dispute between Cynthia Smith and Salvatore Mufalli (collectively, "Petitioners"), and Atlantic City Electric Company ("Respondent" or "ACE"). Having reviewed the record, the Board of Public Utilities ("Board" or "BPU") now **ADOPTS** the Initial Decision rendered on October 2, 2015.

BACKGROUND

On December 29, 2014, Petitioners filed a petition with the Board disputing bills for their account ending in 9983 at their residence on Morton Avenue, West Berlin, New Jersey ("Morton Avenue"). Petitioners sought a determination that they are not responsible for certain amounts billed to them as customers of record for premises located at Andrea Court, Sicklerville, New Jersey ("Andrea Court"). They assert that Mr. Mufalli is incorrectly listed as a customer of record as to the Andrea Court premises, and that neither of the Petitioners is responsible for electric bills covering the time that a tenant occupied the Andrea Court premises based on a lease agreement obligating the tenant to pay all utilities other than sewer. Finally, Petitioners

¹ Commissioner Upendra J. Chivukula did not participate in discussion, deliberation, or vote on this matter.

allege that at least a portion of the amounts claimed by ACE are not properly the obligation of the Petitioners since that portion is subject to an Accord and Satisfaction entered into between Petitioners and a third-party supplier of electricity to the Andrea Court premises.

On April 16, 2015, Respondent filed an answer denying Petitioners' allegations. On June 2, 2015, this case was transmitted to the Office of Administrative Law ("OAL") by the Board as the transmitting agency. The case was then assigned to Administrative Law Judge ("ALJ") Joseph M. Martone for hearing and was scheduled to be heard on June 17, 2015. On the scheduled hearing date, attorney for Respondent and Respondent's witness appeared, but there was no appearance by Petitioners or their attorney. Upon receipt of the written explanation and there being no objection from attorney for Respondent, ALJ Martone rescheduled the case for hearing July 16, 2015.

At the July 16, 2015 hearing, ALJ Martone heard the testimony of Ms. Smith, Mr. Mufalli, and Marianne Murphy, lead analyst for ACE. On July 16, 2015, the record was initially closed. However, certain exhibits which had been marked in evidence at the hearing had not been provided to ALJ Martone, and as a result, the record was reopened pending the receipt of Exhibits P-3, P-5, and P-6. The record was again closed on August 30, 2015.

On October 2, 2015, ALJ Martone submitted his Initial Decision in this matter to the Board. A copy of the Initial Decision is attached. In his Initial Decision, ALJ Martone found that Petitioners were the customers of record, thereby responsible for payment of all utility service rendered pursuant to N.J.A.C. 14:3-7.1. Furthermore, ALJ Martone found that Petitioners failed to establish their entitlement to a credit or set-off from Respondent with respect to the Accord and Satisfaction and related Stipulation of Dismissal between Petitioners and Clearview Electric ("Clearview").

As noted in the Initial Decision, the record reflected the following: Petitioner, Cynthia L Smith is the landlord and owner of premises located at Andrea Court. She resided there for a number of years but eventually moved to a larger home with the intention of renting these premises. Yvonne Jones became her tenant at Andrea Court and the two entered into a lease dated April 15, 2011. (P-1). Ms. Jones remained at the premises until the end of August 2013 when she vacated. Under the terms of paragraph 11 of the lease, the tenant is responsible for payment of all utilities except sewer. Ibid.

Ms. Smith testified to her understanding that Ms. Jones changed the electricity to Ms. Jones' name as required by the lease. However, Ms. Smith later learned that this was never done. When Ms. Jones left the premises, she left no forwarding address. Ms. Smith stated that at some point while Ms. Jones was still a tenant, she learned of an electric bill from ACE that had been mailed to Andrea Court showing a balance due of approximately \$4,900. She contacted ACE and was asked by a representative if she wanted the electricity disconnected. Rather than disconnect the electric at that time, she said she would contact the tenant to have the tenant arrange to take over the bill and pay the balance.

Ms. Smith also testified that she learned that approximately \$2,100 of the bill was owed to Clearview as a third-party provider of electricity. She terminated Clearview as a provider and testified that there was an agreement with Marianne Murphy from ACE that \$2,100 would be deducted from the bill. However, ACE sent her a collection notice dated July 14, 2014, seeking the payment of \$4,527.97.

Ms. Smith admitted she did not take action to cease electric service and to close the account in her name for Andrea Court. She did attempt to make collection efforts from the tenant for the past due electric bills but was unsuccessful.

Mr. Mufalli testified that he does not know how his name appeared on the electric bill for Andrea Court. He claimed not to own these premises and simply attempted to assist Ms. Smith in making repairs or arranging for repairs to be made on her behalf after Ms. Jones vacated the premises.

Marianne Murphy was the only witness to testify for Respondent. She has been employed by PEPSCO Holdings, Inc., the parent company to ACE, for sixteen years. She is a Lead Analyst in the Regulatory and Executive Customer Relations Department, a position she has held for eight years. In the course of her duties and responsibilities, she handles complaints involving ACE and the BPU.

Ms. Murphy testified to portions of the New Jersey Administrative Code (R-1), asserting that N.J.A.C. 14:3-1.1 defines the customer of record, in this case both Ms. Smith and Mr. Mufalli, as the person who applies for utility service, and the person responsible for payment of the utility bill. She stated that ACE did not become aware there was a tenant at the premises until May 1, 2012, when Ms. Smith contacted ACE and spoke to a customer service representative. (R-2). Ms. Murphy testified using business records to confirm conversations between Ms. Smith and ACE. (R-2 to R-4). Such records detailed the following series of phone calls: On May 1, 2012, Ms. Smith contacted ACE and learned that the tenant had not changed the account into her name. Ms. Smith then indicated that she would contact the tenant and have the tenant call ACE and take responsibility for the bill. Ms. Smith again contacted ACE and spoke to a customer service representative on July 11, 2012. (R-3). Ms. Smith wanted to know how she could get the account out of her name and was advised to schedule a disconnection. Ms. Smith then responded that she was going to talk to the tenant and would call back. On August 29, 2013, Ms. Smith again called ACE and was advised that \$4,811.71 was due on the account. (R-4). Ms. Smith stated that she does not reside there and would not be paying the bill and the account should have been taken out of her name. Ms. Smith then requested and had the service terminated.

Ms. Murphy testified that she is familiar with the Andrea Court account and that there is no record that the tenant ever contacted ACE to change electric service for the account from Petitioners' name to her name. Ms. Murphy identified electric bills sent to Salvatore Mufalli and Cynthia Smith addressed to Andrea Court, between January 24, 2012 and June 12, 2014. (R-5). Beginning with the April 2014 bill, only Cynthia Smith is listed on the electric bills. The June 2014 bill is the final bill for this account and shows a total amount due of \$5,027.97.

Ms. Murphy testified that a third-party electric supplier, Clearview, was supplying electric service to Andrea Court. She explained that customers have the option to have their electric service supplied by a party other than ACE. Ms. Murphy stated that in this particular instance the tenant contracted with Clearview to supply electricity for the account. Once ACE is contacted by the third-party supplier and notified of the change in electric supply, ACE continues to read the meter, sends the consumption information to the supplier, and the supplier sends the billing amount to ACE. In New Jersey, utility companies are obligated to purchase receivables from the third-party supplier by paying over to it the amount of the supplier's bill. In this case, the balance owed to ACE for Electric Service (R-6) was \$2,880.21. This information is reflected in

the record of supplier invoices and payments made by ACE to Clearview (R-7) pursuant to a form of an Agreement between ACE and Clearview. (R-8).

Ms. Murphy testified that the billing and other transactions and the transfer of payments between ACE and Clearview are all accomplished electronically. In September 2014, when service was discontinued at Andrea Court, the balance due of \$4,527.97 was transferred to the Morton Avenue account. The customers of record on Morton Avenue account were Cynthia Smith and Salvatore Mufalli. The bills reflecting the balance transfer and both Ms. Smith and Mr. Mufalli as customers of record for the Morton Avenue property were identified by Ms. Murphy. (R-9).

On cross examination, Ms. Murphy stated that she does not have documents or records with respect to the commencement of the account on Andrea Court. Ms. Murphy stated it is possible to have customers call ACE and claim to be someone they are not, but she explained that they are required to provide the last four digits of their social security number or other pertinent information to confirm their identity.

Concerning payments made, Ms. Murphy identified a letter from an attorney for ACE, to Petitioners' attorney, dated January 27, 2014. (P-8). In that letter, it was stated that between February 2012 and July 2013, the sum of \$3,100 had been paid to ACE on the Andrea Court account. ACE could not determine from which bank account the payments had been made, but made certain to apply the payments to Ms. Smith's electric account.

Additionally, ALJ Martone took judicial notice of an Accord and Satisfaction entered into between Clearview, the Releasor, and Ms. Smith and Mr. Mufalli, the Releasees, on February 14, 2014. (P-11). This document states:

In consideration of the Our [sic] compensation for releasing this claim is to hold the releasor harmless in and dismiss an action filed by Releasees in Atlantic County Superior Court of New Jersey. ATL DC-9022-13., the receipt and sufficiency of which consideration is acknowledged, the Releasor releases and forever discharges the Releasee . . . from all manner of actions, causes of action, debts, accounts, bonds, contracts, claims and demands which has been or maybe sustained as a consequence of the failure of the Releasee to repay in full the debt of two thousand, one hundred eighteen and eight hundredths (\$2,118.08) USD, owed to the Releasor since September 25, 2013, following The debt became owed following the tenant's (Yvonne Jones) failure to change Utilities in her name, per lease agreement, resulting in an Electric Supplier, Releasor Clearview, being owed \$2,118.08.

The Releasor acknowledges that this accord and satisfaction is given with the express intention of effecting the extinguishment of certain obligations owed to the Releasor, and with the intention of binding its directors, officers, employees, agents, assigns and successors.

This accord and satisfaction is given in full knowledge that the consideration given, as noted above, is being accepted as full and final satisfaction of the full debt claim.

A subsequent provision of the Accord and Satisfaction refers to a payment and states, "It is agreed that the payment is not deemed to be an admission of liability on the part of the Releasee." Ibid.

However, as part of her testimony, Ms. Murphy stated that her role would have made her aware of a credit or rebate sent to ACE from the third-party supplier for its charges. According to her testimony, no such credit or rebate was ever received by ACE.

After the conclusion of the hearing, ALJ Martone sent a letter to Counsel requesting copies of P-3, P-5, and P-6, and also asking to include in the record the Affidavit in Support of Request for Entry of Default for Sum Certain ("Affidavit"), which document had been attached to the Petition and transmitted as part of the file from the BPU to the OAL. (C-2 – Letter from ALJ Martone to parties asking for exhibits P-3, P-5, P-6 and C-1A). Advising Counsel that he found the Affidavit to be relevant on the issue of Mr. Mufalli's ownership of Andrea Court, ALJ Martone requested the attorneys' position on the inclusion of the Affidavit. Neither party opposed the inclusion of the Affidavit. (C-3 and C-4). As a result, ALJ Martone included in the record the Affidavit, which was executed by Ms. Smith and Mr. Mufalli before a Notary Public, declaring that Ms. Smith and Mr. Mufalli are the owners of a rental residential property located at Andrea Court. (C-1A).

As previously noted, ALJ Martone issued an Initial Decision finding that Petitioners were the customers of record, thereby responsible for payment of all utility service rendered pursuant to N.J.A.C. 14:3-7.1. Additionally, ALJ Martone found that Petitioners failed to establish their entitlement to a credit or set off from Respondent with respect to the Accord and Satisfaction and related Stipulation of Dismissal between Petitioners and Clearview. On October 9, 2015, Petitioner filed exceptions to the Initial Decision. In their exceptions, Petitioners alleged that: (1) the unpaid electric bill should have resulted in an interruption of services at the rental property, and that the balance of the bill was improperly transferred; (2) the ALJ erred in examination of the electric bills relative to Mr. Mufalli's liability; and (3) the ALJ did not give the appropriate weight to Ms. Smith's testimony regarding an agreement reached with ACE to resolve this matter. On October 19, 2015, Respondent replied to Petitioners' exceptions arguing that Petitioner's exceptions should be rejected and urging the Board to uphold the Initial Decision.

DISCUSSION

As the reviewing agency, the Board "may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." N.J.A.C. 1:1-18.6(c). Additionally, the parties are bound by the Rules and Regulations adopted by the Board of Public Utilities since they have the force and effect of law. State by Van Riper v. Atl. City Elec. Co., 23 N.J. 259, 270 (1957). There are two primary regulations applicable to this case. N.J.A.C. 14:3-1.1, in the "Definitions" section provides: "Customer of record" means the "person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein." Moreover, N.J.A.C.

14:3-7.1(a) in the "Billing general provisions" section provides: "The customer(s) of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered."

Based upon the above provisions and the record, Petitioners, as customers of record, are responsible for payment for all electrical service rendered to Andrea Court. As of April 15, 2011, the Petitioners herein were the "customer of record" for Andrea Court, as defined by N.J.A.C. 14:3-1.1. Further, from April 15, 2011, until August 29, 2013, neither of Petitioners took any steps or action to disconnect electric service to Andrea Court premises or otherwise terminate their status as "customer of record." Ms. Smith admitted that she did not take steps to disconnect or terminate electric service being provided to the tenant until August 29, 2013. (1T:40-17 to 42-25). This testimony is further supported and confirmed by business records of ACE consisting of memoranda of conversations between Ms. Smith and representatives of ACE on May 1, 2012 (R-2), July 11, 2012 (R-3) and August 29, 2013 (R-4). As the customer of record, during the above period of time, Petitioners are responsible for payment for all utility service rendered pursuant to N.J.A.C. 14:3-7.1.

There is also support in the record that Salvatore Mufalli is properly included as a customer of record on the bills for Andrea Court. While Mr. Mufalli's testimony denying ownership interest in Andrea Court was not directly disputed, Ms. Murphy testified that a person is not included as a customer of record without there being a request by the customer and verification steps taken by the public utility. In addition, the Affidavit executed under oath before a notary public by Cynthia Smith and Salvatore Mufalli, declares that they are the owners of the rental residential property located at Andrea Court. Petitioners failed to call into question Ms. Murphy's testimony on the issue, and did not oppose the inclusion of the Affidavit into evidence. The Board agrees with ALJ Martone's finding that Mr. Mufalli is properly included as a customer of record.

Likewise, ALJ Martone's finding that the Petitioners are not entitled to an offset based on the Accord and Satisfaction between them and Clearview is amply supported by the record. The testimony and supporting documents provided by Ms. Murphy show that Clearview supplied electric service to Andrea Court. Pursuant to an agreement between ACE and Clearview, ACE billed \$2,118.08 to the customer of record and ACE paid this amount to Clearview as a third-party supplier in accordance with the requirements of the BPU. There are no proofs in the record that ACE received payment of this amount from any party. ACE was not involved in the execution of either the Accord and Satisfaction or the Stipulation of Dismissal as a party and thus, is not bound by their terms.

As for Petitioners' exceptions, the Board notes that, pursuant to N.J.A.C. 1:1-18.4, any party may file written exceptions with the Board within thirteen days from the date that the initial decision was mailed. A copy of the filed exceptions shall also be served on all other parties and the judge. N.J.A.C. 1:1-18.4(a). Exceptions must: (1) "Specify the findings of fact, conclusions of law or dispositions to which exception is taken;" (2) "Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge;" and (3) "Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon." N.J.A.C. 1:1-18.4(b). Further, exceptions may not include evidence not presented at hearing, nor may such evidence be incorporated or referred to within exceptions. N.J.A.C. 1:1-18.4(c).

Here, Petitioners' exceptions were timely filed. Although Petitioners' exceptions raise some issues with which they take exception, the exceptions fail to propose specific findings of fact, conclusions of law or dispositions in lieu of, or in addition to, those reached by ALJ Martone or cite to evidence in the record in support of their assertions, as required by N.J.A.C. 1:1-18.4(b)(2)-(3). Nonetheless, the Board will address the stated exceptions.

Petitioners' first exception alleged that it is unfathomable that an electric bill for thousands of dollars did not result in an interruption of services at Andrea Court property, and that the action of transferring the bill to the account associated with the customer of records' primary residence, here Morton Avenue, is unsupported by law. As to the interruption of services claim, Ms. Smith had at least three separate opportunities in 15 months, to disconnect service during her calls with ACE, yet she failed to do so. As to the transfer of the bill to Petitioners' Morton Avenue account, ALJ Martone correctly found that Petitioners were the customers of record, and were thereby responsible for the balance of the bill associated with Andrea Court.

Petitioners' second exception alleged that ALJ Martone erred in his examination of the electric bills as it relates to the liability of Mr. Mufalli. However, the representation made by Petitioners' that the electric bills prior to the year 2014 do not contain Mr. Mufalli's name is incorrect. (R-5). Additionally, as to Mr. Mufalli's liability, ALJ Martone found compelling an Affidavit executed by Mr. Mufalli and Ms. Smith, which contained a representation by Mr. Mufalli that he was the owner of Andrea Court. (C-1A).

Petitioners' final exception alleged that ALJ Martone erred in failing to give appropriate weight to the testimony of Ms. Smith regarding an agreement reached with ACE to resolve this matter. However, as N.J.A.C. 1:1-18.6(c) states, "The agency head may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." Petitioners have not met this burden in their exception. For those reasons, the Initial Decision was properly based upon findings of fact and conclusions of law that are supported by the evidence, and is not arbitrary and capricious.

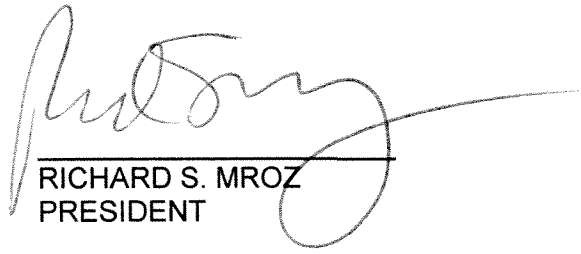
After review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of the ALJ to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioners failed to bear their burden of proof as there is nothing in the record demonstrating that Salvatore Mufalli is not properly included as a customer of record. Furthermore, the Board **FINDS** that as the customer of record, Petitioners are responsible for payment of all utility service rendered by ACE pursuant to N.J.A.C. 14:3-7.1, and the Board **FINDS** that the Petitioners have failed to establish their entitlement to a credit or set off from Respondent ACE with respect to the Accord and Satisfaction and related Stipulation of Dismissal between Petitioners and Clearview.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be **DISMISSED**.

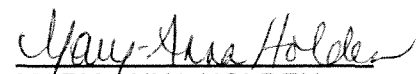
The effective date of this Order is November 26, 2015.


DATED: 11/16/15

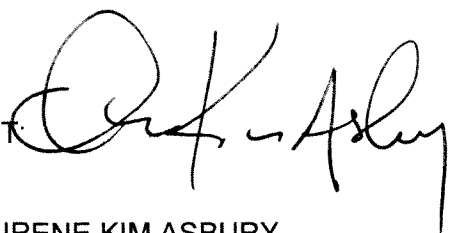
BOARD OF PUBLIC UTILITIES
BY:

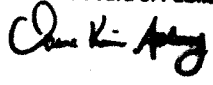

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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


SALVATORE MUFALLI AND CYNTHIA SMITH

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU Dkt. No. EC14121442U

OAL Dkt. No. PUC 8184-15

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BOARD OF PUBLIC UTILITIES
MAIL ROOM

INITIAL DECISION

OAL DKT. NO. PUC 8184-15

AGENCY DKT. NO. EC14121442U

**SALVATORE MUFALLI and
CYNTHIA SMITH,**

Petitioners,

v.

**ATLANTIC CITY ELECTRIC
COMPANY,**

Respondent.

CMS
LEGAL
Gertsman
J. KANE
Beslow
DAG
C. Vachier
E. Hartsfield
J. Ford
R. Lambert
D. Thomas
V. Haynes
A. Reed
Customer Assi

Ellyn Epstein, Esq., for petitioners

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

Record Closed: September 8, 2015

Decided: October 2, 2015

BEFORE JOSEPH F. MARTONE, ALJ t/a:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This case involves a billing dispute arising between Atlantic City Electric Company (ACE), a New Jersey public utility providing electric service to premises located at 10 Andrea Court, Sicklerville, New Jersey, and petitioners Salvatore Mufalli and Cynthia Smith, who are the customers of record as to these premises. Petitioners

are seeking a determination that they are not responsible for certain amounts billed to them as customers of record for premises located at the above premises. They assert that petitioner Mufalli is incorrectly listed as a customer of record as to these premises, and that neither of the petitioners are responsible for electric bills covering the time that a tenant occupied the premises based on a lease agreement obligating the tenant to pay all utilities other than sewer. Finally, petitioners allege that at least a portion of the amounts claimed by ACE are not properly the obligation of the petitioners since that portion is subject to an Accord and Satisfaction entered into between petitioners and a third-party supplier of electricity to the subject premises.

This case was transmitted to the Office of Administrative Law (OAL) by the New Jersey Board of Public Utilities (BPU) as the transmitting agency. The case was then assigned to me for hearing and was scheduled to be heard on June 17, 2015, at the Trenton office. On the scheduled hearing date, attorney for respondent and respondent's witness appeared, but there was no appearance by petitioners or their attorney as of 9:55 a.m. I then made a courtesy call to attorney for petitioners and left a voicemail message at her office. I then released respondent's attorney and witness at 10:00 a.m. At 10:30 a.m., attorney for petitioners called and explained that there had been a traffic accident on the main highway which resulted in all traffic being moved to local roads, and they became lost. I directed counsel to submit a written explanation for their delay. Upon receipt of the written explanation and there being no objection from attorney for respondent, I rescheduled the case for hearing on July 16, 2015, at the Atlantic City office.

On July 16, 2015, the hearing was held and at the conclusion of the hearing I closed the record. However, I later learned that certain exhibits which had been marked in evidence at the hearing had not been provided to me. I was also concerned about an apparently relevant document that had not been offered in evidence. As a result, I reopened the record and directed a letter to counsel dated August 21, 2015, seeking copies of these exhibits in order that I may finalize my decision. When these documents were either supplied or accounted for, and counsel responded to my concern, I reclosed the record on August 30, 2015.

FACTUAL DISCUSSION

Hearing Testimony and Evidence

Most of the essential facts in this matter are not disputed. Petitioner, Cynthia L. Smith, is the landlord and owner of premises located at 10 Andrea Court, Sicklerville, New Jersey. She resided there for a number of years but eventually moved to a larger home with the intention of renting these premises. She eventually obtained Yvonne Jones as a tenant and rented it to her by entering into a lease dated April 15, 2011 (P-1). Ms. Jones remained at the premises until the end of August 2013 when she vacated. It is noted that under the terms of paragraph 11 of the lease (P-1), the tenant is responsible for payment of all utilities except sewer.

Ms. Smith testified to her understanding that Ms. Jones changed the electricity to Ms. Jones' name as required by the lease. Ms. Smith later learned that this was never done by Ms. Jones. When Ms. Jones left the premises she left no forwarding address. Ms. Jones paid to Ms. Smith the monthly rent of \$1,100 up to date although she was often late. After Ms. Jones vacated the premises, Ms. Smith found that the home had been destroyed. It required extensive repairs and it was necessary for her to obtain the help of her boyfriend, Salvatore (Sam) Mufalli, to assist her in having these repairs accomplished in order that she could attempt to re-rent the vacated premises.

Ms. Smith stated that at some point while Ms. Jones was still a tenant, she learned of an electric bill from ACE that had been mailed to 10 Andrea Court showing a balance due of approximately \$4,900. She contacted ACE and was asked by a representative if she wanted the electricity disconnected. She said she would contact the tenant to have the tenant arrange to take over the bill and pay the balance.

Ms. Smith also learned that \$2,100 of the bill was owed to Clearview as a third-party provider of electricity. She terminated Clearview as a provider and testified that there was an agreement with Marianne Murphy from ACE that \$2,100 would be deducted from the bill. At that time, the balance of the bill, less \$2,100, less \$1,000 she had paid left a balance of \$1,880. She also claimed credit for a security deposit given

when she originally moved in to 10 Andrea Court, but did not specify the amount. She testified that in April 2014, the balance claimed by ACE for 10 Andrea Court was \$4,887.46, and the final bill in October 2013 was \$4,983.29 (P-3). ACE sent her a collection notice dated July 14, 2014, seeking the payment of \$4,527.97.

Ms. Smith admitted she did not take action to cease electric service and to close the account in her name for 10 Andrea Court. She moved into those premises in November 2010, and took a tenant in April 2011. She did attempt to make collection efforts from the tenant for the past due electric bills but was not successful. She did not pay \$3,100 to ACE.

Salvatore (Sam) A. Mufalli testified that he does not know how his name appeared on the electric bill for 10 Andrea Court. He does not own these premises. He simply attempted to assist Ms. Smith in making repairs or arranging for repairs to be made on her behalf after Ms. Jones vacated the premises.

Marianne Murphy was the only witness to testify for respondent. She has been employed by PEPCO Holdings, Inc., the parent company to ACE for sixteen years. She is a lead analyst with the regulatory and executive customer relations department, a position she has held for eight years. In the course of her duties and responsibilities she handles complaints involving ACE and the BPU.

Ms. Murphy testified to portions of the New Jersey Administrative Code (N.J.A.C.) (R-1), asserting that these provisions mean the person who applies for utility service is the customer of record and is the person responsible for payment of the utility bill. She then testified that during the time period that is the subject of this hearing, the customer of record for 10 Andrea Court was Cynthia Smith and Samuel Mufalli. She stated that ACE did not become aware there was a tenant at the premises until May 1, 2012, when Ms. Smith contacted ACE and spoke to a customer service representative (R-2). This business record appears to confirm Ms. Smith's testimony that she contacted ACE and learned that the tenant had not changed the account into her name. Ms. Smith then indicated that she would contact the tenant and have the tenant call ACE and take responsibility for the bill. Ms. Smith again contacted ACE and spoke to a

customer service representative on July 11, 2012 (R-3). Ms. Smith wanted to know how she could get the account out of her name and was advised to schedule a disconnection. Ms. Smith then responded that she was going to talk to the tenant and call back. On August 29, 2013, Ms. Smith again called ACE and was advised that \$4,811.71 was due on the account. Ms. Smith stated that she does not reside there and would not be paying the bill and the account should have been taken out of her name. Ms. Smith then requested to have the service terminated. Ms. Murphy then transferred the call within ACE so that Ms. Smith could arrange for the discontinuance of service.

Ms. Murphy testified that she has been familiar with this account for quite some time and testified that there is no record that the tenant ever contacted ACE to change electric service or the account from petitioners' name to her name. Ms. Murphy identified electric bills sent to Salvatore Mufalli and Cynthia Smith addressed to 10 Andrea Court, Sicklerville, New Jersey, between January 24, 2012 and June 12, 2014 (R-5). Beginning with the April 2014 bill, only Cynthia Smith is listed. The June 2014 bill is the final bill for this account and shows a total amount due of \$5,027.97.

Ms. Murphy testified that a third-party electric supplier was supplying electric service 210 Andrea Court. She explained that customers have the option to have their electric service supplied by a party other than ACE. Ms. Murphy stated that in this particular instance the tenant apparently had contracted with Clearview Electric to supply electricity for the account. So far as ACE knew it was the petitioners who made this contact. As far as ACE, once it is contacted by the third-party supplier and notified of the change, from that point on, ACE reads the meter, sends the consumption information to the supplier and the supplier sends the billing amount to ACE. In New Jersey, utility companies are obligated to purchase receivables from the third-party supplier by paying over to it the amount of the supplier's bill. In this case, the amount billed by ACE is set forth in the first two pages of a Billing Statement for Electric Service (R-6) showing a balance due to ACE in the amount of \$2,880.21. The third page of this Billing Statement for Electric Service (R-6) shows charges billed by Clearview and included in the monthly bills (R-5). This information is reflected in the record of supplier invoices and payments made by ACE to Clearview (R-7) pursuant to a form of an

Agreement between ACE and Clearview (R-8). Ms. Murphy testified that the billing and other transactions and the transfer of payments between ACE and Clearview are all accomplished electronically. In September 2014, when service was discontinued at 10 Andrea Court, the balance due of \$4,527.97 was transferred to the account on 319 Morton Avenue, West Berlin, New Jersey. The customer of record on this account was Cynthia Smith and Salvatore Mufalli. The bills reflecting this information were identified by Ms. Murphy (R-9).

On cross examination, Ms. Murphy stated that she does not have documents or records with respect to the commencement of the account on 10 Andrea Court. She identified a record of a customer contact with Ms. Smith on August 29, 2013. In that contact, Ms. Smith stated she is upset service is in her name, and stated that the tenants, Yvonne Jones and her son Kyle, have been residing there since March or April 2011, and the mother is moving. Ms. Smith assumed that succession had been completed back in 2011 but she will talk to the tenants. She did not request a disconnection at that time. In a subsequent contact on that same day, Ms. Smith requested to have the service terminated.

Ms. Murphy stated it is possible to have customers call ACE and claim to be someone they are not, but she explained that they are required to provide the last four digits of their social security number or other pertinent information to confirm their identity.

Ms. Murphy identified a letter from Renee Suglia, Esq., an attorney for ACE, to petitioners' attorney dated January 27, 2014 (P-8). In that letter, it was stated that the sum of \$3,100 had been paid to ACE out of Ms. Smith's bank account. However, in a letter dated February 10, 2014 (P-9 ID only), it was later clarified that ACE could not confirm the bank account from which payments were made. In any event, Ms. Smith would have the benefit of those payments and would be credited with those amounts. At this point, there was considerable discussion concerning a document identified as an "Accounts Receivable Statement, 10 Andrea Court," marked as exhibit P-10 for identification. Since the document was never properly identified in the record, and was not accepted in evidence, this discussion is disregarded irrelevant. However, in

response to the question whether there was ever a credit or rebate sent to ACE from the third-party supplier for its charges, Ms. Murphy stated she would have been aware of one because of her position, and there was no such credit or rebate ever received by ACE. There were discussions about ACE accepting partial payments in order to restore service, but that is all she can recall.

Near the close of the hearing, attorney for petitioners requested the admission into evidence of a February 14, 2014, Accord and Satisfaction between Clearview Electric, the Releasor and Cynthia Smith and Salvatore Mufalli, the Releasees, on the basis of judicial notice (P-11¹). This document states:

In consideration of the Our compensation for releasing this claim is to hold the releasor harmless in and dismiss an action filed by Releasees in Atlantic County Superior Court of New Jersey. ATL DC-9022-13., the receipt and sufficiency of which consideration is acknowledged, the Releasor releases and forever discharges the Releasee * * * from all manner of actions, causes of action, debts, accounts, bonds, contracts, claims and demands which has been or maybe sustained as a consequence of the failure of the Releasee to repay in full the debt of two thousand, one hundred eighteen and eight hundredths (\$2,118.08) USD, owed to the Releasor since September 25, 2013, following The debt became owed following the tenant's (Yvonne Jones) failure to change Utilities in her name, per lease agreement, resulting in an Electric Supplier, Releasor Clearview, being owed \$2,118.08.

The Releasor acknowledges that this accord and satisfaction is given with the express intention of effecting the extinguishment of certain obligations owed to the Releasor, and with the intention of binding its directors, officers, employees, agents, assigns and successors.

This accord and satisfaction is given in full knowledge that the consideration given, as noted above, is being accepted as full and final satisfaction of the full debt claim.

¹ This document was inadvertently referred to during the hearing as exhibit P-9. Since exhibit numbers P-9 and P-10 were previously used in connection with other exhibits marked for identification, I have redesignated the Accord and Satisfaction and related documents as exhibit P-11 in evidence.

A subsequent provision of the Accord and Satisfaction refers to a payment and states, "It is agreed that the payment is not deemed to be an admission of liability on the part of the Releasee."

After the conclusion of the hearing, I found it necessary to reopen the record and address additional documents which I felt compelled to raise with counsel (C-2). As a result of my review of the transmittal documents from the Board of Public Utilities Transmittal Officer, I came upon documents clearly relevant to one of the issues before me. While these documents were not made a part of the record of proceedings before me, an Affidavit in Support of Request for Entry of Default for Sum Certain, executed by Cynthia Smith and Salvatore Mufalli before a Notary Public, declares that Ms. Smith and Mr. Mufalli are the owners of a rental residential property located at 10 Andrea Ct. (C-1A). This admission was clearly relevant and I proposed to reopen the record and to accept this document in evidence as to the issue of Mr. Mufalli's ownership of these premises. I asked both counsel advise me of their respective positions as to this issue and whether either party wishes an opportunity to address this matter on the record. Both attorneys responded, but neither requested an opportunity to address this on the record (C-3 and C-4).

Findings of Fact

For the reasons stated herein, I make the following **Findings of Fact**:

1. I **FIND** that petitioners have failed to establish that Salvatore Mufalli is not properly included as a customer of record on the bills for the subject premises. While Mr. Mufalli's testimony denying ownership or other involvement with the subject premises was not directly disputed, Ms. Murphy's testimony is that a person is not included as a customer of record without there being a request by the customer and verification steps taken by the public utility. In addition, included with the documents transmitting this case to the OAL by the BPU was an affidavit supporting a request for entry of default executed under oath before a notary public by Cynthia Smith and Salvatore Mufalli. In that affidavit, the affiants declare that they are the owners of a rental residential property located at 10 Andrea Court.

2. I **FIND** that as of April 15, 2011, and subsequent to that date to the present time, the petitioners herein were the “customer[s] of record” for the subject premises, as defined by N.J.A.C. 14:3-1.1.

3. I further **FIND** that from April 15, 2011, until August 29, 2013, neither of petitioners took any steps or action to disconnect electric service to the subject premises or otherwise terminate their status as “customer of record.” These findings are supported by the credible testimony of petitioner Cynthia Smith admitting that she did not take steps to disconnect or terminate electric service being provided to the tenant until August 29, 2013. This testimony is further supported and confirmed by business records of ACE consisting of memoranda of conversations between Ms. Smith and representatives of ACE on May 1, 2012 (R-2), July 11, 2012 (R-4) and August 29, 2013 (R-4).

4. I **FIND** that as the customer(s) of record, as defined at N.J.A.C. 14:3-1.1, during the above period of time, petitioners are responsible for payment for all utility service rendered pursuant to N.J.A.C. 14:3-7.1.

5. I **FIND** that the petitioners have failed to establish their entitlement to a credit or set off from respondent ACE with respect to the Accord and Satisfaction and related Stipulation of Dismissal between petitioners and Clearview. The testimony and supporting documents provided by respondent’s witness show that Clearview supplied electric service to 10 Andrea Court totaling \$2,118.08. Pursuant to an agreement between ACE and Clearview, ACE billed \$2,118.08 to the customer of record and paid this amount to Clearview as a third-party supplier in accordance with the requirements of the BPU. There are no proofs in the record that ACE received payment of this amount from any party.

6. I **FIND** that ACE was not involved in the execution of either the Accord and Satisfaction or the Stipulation of Dismissal as a party and is not bound by their terms.

LEGAL DISCUSSION

As stated above, this case involves a billing dispute arising between ACE, a New Jersey public utility providing electric service, and petitioners, who are the customers of record. Petitioners allege that petitioner Mufalli is incorrectly listed as a customer of record of the premises, and that neither of the petitioners are responsible for electric bills during the time period that a tenant occupied the premises and was obligated to pay for electricity based on a lease agreement. Finally, petitioners allege a portion of the amount claimed by ACE is not their obligation since they obtained an Accord and Satisfaction for that portion from a third-party supplier of electricity to the subject premises.

The jurisdiction of the OAL to hear and decide contested cases such as this is derived from the BPU, which is responsible for deciding billing disputes. See, Wood v. Dept. of Community Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990), citing N.J.S.A. 52:14B-1 to -15. In deciding such cases, the parties are bound by the Rules and Regulations adopted by the Board of Public Utilities since they have the force and effect of law.

The regulations applicable to this case are the following:

N.J.A.C. 14:3-1.1 "Definitions" provides:

"Customer of record" means the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein.

N.J.A.C. 14:3-7.1 "Billing general provisions" provides:

(a) The customer(s) of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

Based upon the above provisions, it is clear that petitioners, as customer of record, are responsible for payment for all electrical service rendered to 10 Andrea

Court while they remained as such. While this may appear to be unfair to petitioners, it was because of their failure to terminate electrical service and their status as customers of record that the actual recipient of the electrical service was not billed.

Petitioners also argue that a portion of the claimed amount has been satisfied based upon an Accord and Satisfaction. However, I disagree. First, the terms of the Accord and Satisfaction are confusing. It seems to provide that the consideration (“compensation”) being received by Clearview is that Clearview will be held harmless and will be dismissed from the action filed against it by Smith and Mufalli. In return, Clearview releases and discharges Smith and Mufalli from any cause of action or claim sustained by Clearview as a consequence of the failure of Smith and Mufalli to repay in full the debt of \$2,118.08 currently owed to Clearview since September 25, 2013. Based on the testimony of Ms. Murphy and the record of transactions between ACE and Clearview (R-7), Clearview, as a third-party provider, had received payments from ACE totaling \$2,069.67 as of September 18, 2013.

The Stipulation of Dismissal also appears to be confusing. It provides that Clearview has amicably resolved the claims against it in this matter, and without any admission of liability on the part of Smith and Mufalli and on the part of Clearview, Clearview has agreed to waive the sums due it in exchange for dismissal from this lawsuit. Plaintiffs, Smith and Mufalli, dismissed any and all claims they may have pursued against Clearview with prejudice.

What is clear based upon the language of both the Accord and Satisfaction and the Stipulation of Dismissal is that the consideration for its execution of these documents did not involve the payment of money, but the dismissal of petitioners’ claim against it. It is also clear from these documents that ACE was not involved in the execution of either the Accord and Satisfaction or the Stipulation of Dismissal and is not bound by their terms.

DECISION AND ORDER

For the reasons stated above, I have determined that the petitioners have failed to establish that they are not responsible for amounts billed to them by ACE during the time that they were customers of record for premises located at 10 Andrea Court, Sicklerville, New Jersey. Therefore, I **ORDER** that their petition seeking relief is **DENIED** and **DISMISSED**.

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.

October 2, 2015
DATE


JOSEPH F. MARTONE, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

JFM/cmo

APPENDIX

LIST OF WITNESSES

For Petitioner:

Cynthia Smith
Salvatore Mufalli

For Respondent:

Marianne Murphy

LIST OF EXHIBITS

By the ALJ:

- C-1A Affidavit in Support of Request for Entry of Default for Sum Certain
- C-1B Affidavit in Opposition to Motion to Dismiss
- C-2 ALJ letter to counsel dated August 21, 2015, reopening record
- C-3 Letter response of Pamela J. Scott, Esq. to ALJ dated September 1, 2015
- C-4 Letter response of Ellyn Epstein, Esq. to ALJ dated September 2, 2015

For Petitioner:

- P-1 Residential Lease dated April 15, 2011, between Cynthia Smith, Lessor, and Yvonne Jones, Lessee, leasing 10 Andrea Ct., Gloucester Township, New Jersey
- P-2 (For identification only)
- P-3 Atlantic City Electric bill, October 2013.
- P-4 (For identification only)
- P-5 Termination notice dated June 10, 2015.
- P-6 Payment coupon, July 14, 2014

- P-7 Record of telephone call made to ACE by Cynthia Smith on August 29, 2013
- P-8 January 27, 2014, letter from ACE the Assistant general counsel to attorney for petitioner with billing statement attached
- P-9 (For identification only)
- P-10 (For identification only)
- P-11 February 14, 2014, Accord and Satisfaction and Stipulation of Dismissal between Clearview Electric and petitioners

For Respondent:

- R-1 Copies of provisions of N.J.A.C. 14:3-1.1 and N.J.A.C. 14:3-7.1
- R-2 Record of telephone call made to ACE by Cynthia Smith on May 1, 2012
- R-3 Record of telephone call made to ACE by Cynthia Smith on July 11, 2012
- R-4 Record of telephone call made to ACE by Cynthia Smith on August 29, 2013 (Same as (P-7))
- R-5 Package of ACE Bills - February 2012 to June 2014 for 10 Andrea Ct., Lambs Terrace, NJ 08081
- R-6 Billing Statement for Electric Service
- R-7 Accounts Receivable statement showing payments made by ACE to Clearview Electric
- R-8 Third-Party Supplier form of Master Service Agreement
- R-9 Package of ACE Bills - August 2014 to June 2015 for 319 Morton Ave., West Berlin, NJ, 08091
- R-10 October 1, 2014, letter from Renee Ettore Suglia, ACE Assistant General Counsel to Ellyn Epstein, Esq.