

Date Board mailed Order to OAL: 1/26/17

cc: Service List Attached

DATED: 1/30/17



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 1/30/17

Date Board mailed executed Order to Parties: 1/31/17

ROBERT BOUHON

V.

ATLANTIC CITY ELECTRIC COMPANY
BPU DOCKET NO. EC16030212U
OAL DOCKET NO. PUC 07384-16

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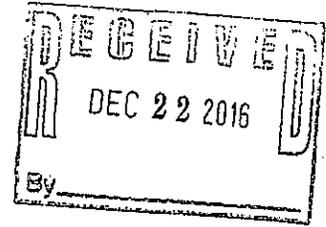
BOARD OF PUBLIC UTILITIES

DEC 22 2016

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW



INITIAL DECISION

OAL DKT. NO. PUC 07384-16

AGENCY DKT. NO. EC16030212U

ROBERT BOUHON,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

John C. Penberthy, III, Esq., for petitioner

Pamela J. Scott, Assistant General Counsel, for respondent Atlantic City Electric Company

Record Closed: November 10, 2016

Decided: December 22, 2016

BEFORE SARAH G. CROWLEY, ALJ:

CMS
V. Haynes
D. Lee Thor
E. Hartsfield
J. Ford
C. Jordan
R. Lambert
D. Gertsman
B. Agee
C. Vachier

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Robert Bouhon (petitioner) filed a petition with the Board of Public Utilities (BPU) on June 6, 2014, challenging a bill received from the Atlantic City Electric Company (ACE) in November 2015. The charges were estimated based on an allegation of meter tampering between October 2009 and September 2014. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on May 16, 2016 pursuant to

N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F -1 to -13. On October 17, 2016, a hearing was conducted, and the record closed after closing submissions by the parties on November 10, 2016.

FACTUAL DISCUSSION AND FINDINGS

TESTIMONY

Robert Bouhon is the owner of property located at 5 Pin Oak Drive, in Tabernacle, New Jersey. He has resided in the home since 2002. He received a bill in November 2015 for \$14,451.20. He denies receiving notice of a meter tampering charge in September 2014. He testified that there were only two people living in the house. He was not aware of any allegations of meter tampering until November 2015. He had fallen behind in prior electric bills and ACE had put him on a payment plan. He had been making extra payments every month in addition to the regular monthly payments. He testified that there were months that he did not get a bill and then he would get several at the same time. He believed that he was keeping current when he received the bill in November 2015 for \$14,451.20.

Kimberly Camp is a senior investigator with ACE, and works in the Revenue Protection Unit. She investigates allegations of meter fraud and theft of electricity. She has been in this title for five years and has been with ACE for thirty-five years. She conducted the investigation of 5 Pin Oak Drive in Tabernacle, New Jersey. She testified that the meter reader was there on August 7, 2014, and discovered a hole drilled in the meter cover. Ms. Camp went out to the site on September 3, 2014 and observed the hole in the meter. She returned to the property on September 9, 2014, and observed that there was now a wire inserted through the drilled hole jamming the disc. She explained the process of putting a wire in to slow the meter down. Ms. Camp replaced the tampered meter at that time. Since that time, the meter was placed in a locked evidence room. The actual meter was entered into evidence as R-2. The meter indicates that it is from 5 Pin Oak Road and has the name Robert Bouhon written on it along with number 18991. The meter itself has a serial number of 87115993. The

drilled hole is visible as are the scratch marks from the wire which had been inserted in the meter.

Ms. Camp discussed how they determine when the tampering commenced as well as how they calculate the amount due. She reviewed the past bills and identified the date when the consumption levels dropped significantly. They also compare them to the same months in prior years. The kilowatt usage at this residence dropped in October 2009. She noted a drop in some months from 27,000 to 8,000. She also noted that after the tampered meter was replaced, the usage went up significantly.

Ms. Camp reviewed the bills from past years to try to pinpoint when the theft of electricity began. She identified a chart marked as R-1, and pointed out where she observed a significant drop in the consumption. A letter was sent in September 2014, to the residence in question, advising that ACE believed there was a theft of services and tampering of the meter. Petitioner never responded to the letter. She testified that they calculated the amount due as a result of the under-billing based on the bills from the year preceding the tampering. In this case, they used the year 2008 and sent a bill based on the undercharges during the period they believe the meter was tampered with.

Marianne Murphy is employed by Pepco Holdings, an affiliate of ACE. She is a Senior Regulatory Lead Analyst. She had held this position for nine years and has been with the company for eighteen years. Prior to her current position, she was a lead analyst for the billing department. She conducted an analysis of the bills in question for 5 Pin Oak Drive in Tabernacle, New Jersey. They then prepared a bill to the customer advising them that an adjustment is being made based on the tampering. She identified the standard letter which was sent to the petitioner which advises that the adjustment is being made to bills from October 2009 through September 2014.

Ms. Murphy testified that the policy of the company is to determine usage for the year immediately preceding the tampering and use this as the basis for its calculation. This policy is consistent with the Tariff which allows them to estimate from available information where tampering results in an incorrect measurement of the services supplied. She testified that this methodology complies with the company policy and the

language of the Tariff. Moreover, it is a fair estimate of the undercharges for the years in question.

Robert Polk is employed by ACE. He is an engineer with custodial responsibilities for the testing, maintenance and care of the electrical meters for ACE. He has been employed in this position since 1998 and has been with ACE for twenty-eight years. He was a meter reader prior to his current position. He performed a test on the meter in question in September 2014. All of the meters are tested in their facility. He performed a kilowatt hour test on the meter in question, which tells you its accuracy under specific load conditions. He identified a print-out from their meter device management system and advised that the test indicated that the meter was accurate within a two percent degree of accuracy. He identified the meter marked into evidence as R-2, and bearing serial number 87115993.

Based on the testimony presented and the documentary evidence submitted, and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the testimony of Ms. Camp, Ms. Murphy and Mr. Polk was sincere and credible and find their testimony as **FACT**. I further **FOUND** that the testimony of Mr. Bouhon was not credible and that the meter in question had been tampered with. I also **FIND** as **FACT** that the meter had been tampered with from October 2009 through September 2014.

LEGAL ANALYSIS AND CONCLUSION

The burden of establishing that the charges tendered to the petitioners are not proper, such that they are owed a refund, rests with the petitioners. They must establish their contention that the billings are not proper by a preponderance of the credible evidence. In this case, the petitioner has not produced any evidence that the estimated billings are not proper. Moreover, he has not produced any evidence to indicate that the meter had not been tampered. The respondent demonstrated that the meter in question had been tampered with and that the proper method of calculations used to determine the amount due and owing from the respondent for the years in question.

N.J.A.C. 14:3-4.6 provides:

(a) Whenever a meter is found to be registering fast by more than two percent or in the case of water meters, more than one and one half percent, and an adjustment of charges shall be made in accordance with this section. 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.

(b) If the date when the meter first became inaccurate is known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was in error at the time of the test, adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the total charges for metered service that accrued during the entire period that the meter was in error; and

3. The amount of the adjustment shall be the percentage determined under (b) (1) above, applied to the charges determined under (b) (2) above.

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was inaccurate at the time of the test adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the applicable time period as follows:

i. Determine the period of inaccuracy; that is, the period between the test that found the meter inaccuracy and the earlier of the events at (c)(2)(i)(1) or (2) below (Note: The period of inaccuracy may be longer than the time the meter has served the existing customer):

- (1) The most recent previous test of the meter; or
- (2) The date upon which the meter was taken out of service at the customer's premises;

ii. Perform the following calculation:

- (1) If the period of inaccuracy determined under (c)(2)(i) is shorter than the maximum permitted time between meter tests, as determined under N.J.A.C. 14:5-3.2, 14:6-4.2, or 14:9-4.1(b), divide the period of inaccuracy in half; or
- (2) If the period of inaccuracy is longer than the maximum permitted time between meter tests, divide the permitted maximum time between meter tests in half; then add the difference between the maximum permitted time between meter tests and the period of inaccuracy;

iii. If the time determined under (c)(2)(ii) above is longer than the time the meter has served the existing customer, the applicable time period is the time the meter has served the existing customer;

iv. If the time determined under (c)(2)(ii) above is shorter than the time the meter has served the existing customer, the applicable time period is the time determined under (c)(2)(ii) above;

3. Determine the total charges that accrued during the applicable time period determined under (c) (2) above; and

4. The amount of the adjustment shall be the percentage determined under (c) (1) above, applied to the charges determined under (c) (3) above.-

(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:

1. The meter was tampered with, or other theft of the utility service has been proven;
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.

(e) If a meter is found to be registering less than 100 percent of the service provided because of theft or tampering under (d)(1) above, the utility may require immediate payment of the amount the customer was undercharged.

(f) In cases of a charge to a customer's account under (d)(2) or (3) above, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was undercharged.

N.J.A.C. 14:3-7.2(e) provides:

Rules concerning estimated bills for all customers are as follows:

1. Utility companies shall maintain a regular meter reading schedule and make a reasonable effort to read all meters;

2. Utility companies, upon request, shall make available to all customers a postage-paid business reply card on which the customer may mark the meter reading as follows:

i. The business reply card shall have appropriate explanation. The utility shall permit the customer to telephone the meter reading to the utility. The customer reading is to be used in lieu of an estimated reading, provided the reading is received in time for billing;

3. When a utility estimates an account for four consecutive billing periods (monthly accounts), or two consecutive billing periods (bimonthly and quarterly accounts), the utility shall mail a notice marked "Important Notice" to the customer on the fifth and seventh months, respectively, explaining that a meter reading must be obtained and said notice shall explain the penalty for failure to complete an actual meter reading. After all reasonable means to obtain a meter reading have been exhausted, including, but not limited to, offering to schedule meter readings for evenings and on weekends, the utility may discontinue service provided at least eight months have passed since the last meter reading was obtained, the Board has been so notified and the customer has been properly notified by prior mailing. If service is discontinued and subsequently restored, the utility may charge a reconnection charge equal to the reconnection charge for restoring service after discontinuance for nonpayment;

4. Utility companies shall submit to the Board of Public Utilities a statement detailing their estimating procedures;

5. If low estimates result in a customer receiving an actual bill that is at least 25 percent greater than the prior estimated bill, the utility shall allow the customer to amortize the excess amount. The amortization will be in equal installments over a period of time equal to the period when no actual reading was taken by the customer or the utility; and

6. Annually, the utility shall notify all customers of their rights to amortize as set forth in (e) (5) above.

The relevant Tariff provides that "where tampering with Company's or customer's facilities results in incorrect measurement of services supplied, the responsible party shall pay for such services as the company may estimate from available information to have been used on the premises but not registered the company's meter or meters." BPU NJ No. 11 Electric Service – Section II-8.3.

In this case, from July 2009 to September 2014, the meter in question had been tampered with and was not providing an accurate reading. The company removed the meter in question and found it 99.96 percent accurate, and thereafter, the meter reading substantially increased. There was evidence of meter tampering at the residence and no explanation was offered by the homeowner as to why there was a hole drilled in his meter, and why three days after the meter reader came out there was a wire placed in the meter to slow or stop the meter.

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that the estimated bills were improper or that the meter in question was not tampered with. I further **CONCLUDE** that the estimates provided by ACE which were based on bills from 2008, were consistent with the policy of the company as well as the relevant Tariff.

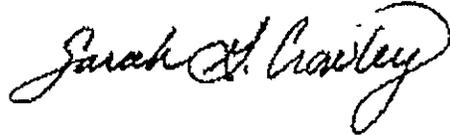
ORDER

It is therefore **ORDERED** that the petition appealing the charges in his matter be and is hereby **DISMISSED**, and petitioner is ordered to pay the \$14,451.20 in disputed bills.

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 22, 2016

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency:

December 22, 2016 (emailed)

Date Mailed to Parties:

/mel/mph

WITNESSES

For Petitioner:

Robert Bouhon

For Respondent:

Kimberly Camp

Marianne Murphy

Robert Polk

EXHIBITS

For Petitioner:

P-30 ACE bill September 2014

P-31 ACE bill November 2015

P-32 ACE bill August 2016

P-33 Superior Court Complaint

For Respondent:

R-1 Chart of kilometer use from 2004 through 2015

R-2 Meter No. 87115993

R-3 September 10, 2014 letter

R-4 Revenue Protection Report

R-5 Adjustment Statement

R-6 Bills

R-7 Chart of usage 2008

R-8 Account Summary 2014-2016

R-9 ACE Tampering policy

R-10 AMI Device Management Statement