

that the charges reflected consumption disproportionate to Petitioner's use. Petitioner sought damages for breach of contract and costs.

On April 5, 2016, ACE filed an answer and counterclaim seeking payment for electric services from the Petitioner in the amount of \$17,521.52. A hearing was held on October 17, 2016 before Judge Crowley wherein Petitioner, as well as three witnesses for the Respondent, provided testimony.

Petitioner testified that he received a bill in excess of \$14,000 in November 2015 and that this was his first time discovering the alleged tampering which formed the basis for those charges, denying receipt of Respondent's letter dated September 10, 2014, notifying him of the same. (T. 10-13).¹ Petitioner further testified that he received a phone call notifying him of ACE's intent to disconnect his service for nonpayment, after which the complaint leading to the present matter was filed. (T. 34-35).

Kimberly Camp, a Senior Investigator in ACE's Revenue Protection Division, testified as to the allegations of meter tampering leading to ACE's estimated charges assessed against Petitioner. Camp testified that she visited the premises on two occasions, first on September 3, 2014 and again six days later on September 9, 2014. (T. 42:12-25). On each occasion, Camp observed a drilled hole on the meter at issue, but on the second occasion discovered a wire inserted through that hole which obstructed the meter's internal functions. (T. 43-44). The meter was admitted into evidence as R-5. Camp testified that she removed the meter and replaced it with a new, sealed meter. (T. 43: 5-11). She explained further the process by which the company determines at what point the tampering began, noting in this instance substantial decreases in meter readings beginning in October 2009. Respondent maintains it was at this time that the meter tampering began and adjusted its charges based on 2008 history for the period from October of 2009 through September 2014, the time the meter was replaced.

Camp testified as to the reason for the additional account number associated with Petitioner's account, which he alleged resulted in improper or inaccurate charges. ACE, in January of 2015, changed the computer systems it uses for customer billing, which was the cause for the two different account numbers linked with Petitioner's property. (T. 78:3-22). She testified that this change would not affect customers' billing or usage history.

ACE next presented the testimony of Marianne Murphy, a Senior Regulatory Lead Analyst for Pepco Holdings, Inc., of which ACE is an affiliate. Murphy testified as to the process ACE used in making the adjustments to Petitioner's electric bill. Murphy testified that ACE based its adjustments on the usage from the prior year, in this case 2008, and applied the daily average usage from each month in that year and multiply that by the number of days in each month of the adjustment period. (T. 101:8-17). She also noted that ACE, in those situations where tampering is found, will apply usage for the year prior to the tampering in making its adjustments. (T:101-102: 25-1).

Ace then presented the testimony of Robert Polk, an engineer tasked with the maintenance and testing of electrical meters for ACE. Polk testified that the meter removed from the Bouhon home was working properly under normal conditions and any obstruction, once removed, would not impact the meter's normal functioning. (T. 129-135). The meter, tested under normal conditions, performed within two percentage points of perfect accuracy.

¹ The letter was admitted into evidence as exhibit R-3.

ALJ Crowley filed an Initial Decision with the Board on December 22, 2016 dismissing Petitioner's claim and ordering the Petitioner to pay \$14,451.20 in disputed bills. The Initial Decision concluded that the Petitioner did not meet the preponderance of the evidence standard of proof that the charges were improper or that there was no tampering with the meter. Neither party filed exceptions to the Initial Decision.

DISCUSSION

In adjudicating customer billing disputes before the Board, the petitioner bears the burden of proof by a preponderance of competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

Here, ALJ Crowley found the testimony of the Respondent's witnesses credible and the Petitioner's testimony not credible and that the meter had been tampered with. The Administrative Procedure Act provides, "The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c). Respondents offered competent evidence to show that the meter had been tampered with and that the charges assessed to Petitioner for electric service were properly adjusted. Based on a review of the record, the Board **FINDS** sufficient, competent, and credible evidence in the record and therefore **ADOPTS** ALJ Crowley's credibility determinations.

The applicable regulation in this matter is N.J.A.C. 14:3-4.6(e), which provides, "[i]f 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." The utility, under this provision, may require payment for undercharged services where the cause was, as alleged in this case, meter tampering. The evidence in the record demonstrates that tampering had occurred and the utility may properly require payment for those services pursuant to N.J.A.C. 14:3-4.6(e).

From the period spanning October 2009 through September 2014, the meter readings at the Bouhon residence decreased substantially from the usage levels in prior years. When the meter was replaced in September 2014, usage increased significantly. Further, when the original meter was tested under normal conditions, it performed within two percentage points of perfect accuracy.

The Initial Decision notes that the relevant Tariff permits the adjustments and calculations made by ACE in this matter. It provides, "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 property but not registered to the company's meter or meters." BPU NJ No. 11 Electric Service – Section II-8.3.

ACE adjusted its charges based on 2008 usage levels, the year prior to the meter tampering. Credible testimony demonstrated that basing its adjustments on the year prior to such interference is ACE's general practice and those levels constituted available information from which the company may estimate usage within the meaning of the Tariff. The adjustments made to Petitioner's bills were properly assessed and in conformity with N.J.A.C. 14:3-4.6 and

the Tariff, which Respondents demonstrated by credible evidence and testimony in the record. Petitioner did not meet his burden to show that those charges were improper.

Consequently, the Board **FINDS** that ALJ Crowley properly determined that the meter had been tampered with and that Petitioner did not prove by a preponderance of the evidence that the charges were improper.

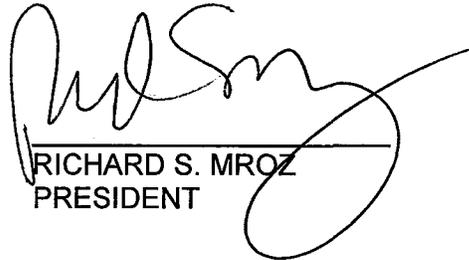
Upon careful review and consideration of the record and ALJ Crowley's credibility determinations, the Board **HEREBY FINDS** the findings of fact and conclusions of law of the ALJ to be reasonable and, accordingly, **HEREBY ACCEPTS** them.

Therefore, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and the petition in this matter is **HEREBY DISMISSED**.

The effective date of this order is March 4, 2017.

DATED: 2/22/17

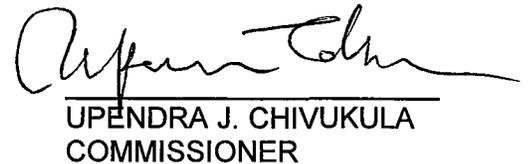
BOARD OF PUBLIC UTILITIES
BY:

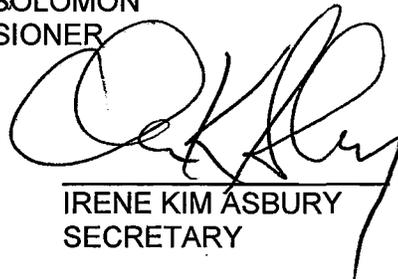

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

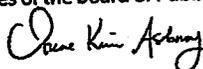

MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
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



ROBERT BOUHON,

V.

ATLANTIC CITY ELECTRIC COMPANY,

**BPU DOCKET NO. EC16030212U
OAL DOCKET NO. PUC 07384-16**

SERVICE LIST

John C. Penberthy, III, Esq.
113 White Horse Road, Suite 2
Voorhees, NJ 08043
johncpenberthy@gmail.com

Pamela J. Scott, Esq.
Post Office Box 6066
Newark, DE 19714-6066
pjscott@pepcoholdings.com

Eric Hartsfield, Director
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Eric.Hartsfield@bpu.state.nj.us

Julie Ford-Williams, Chief
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Julie.Ford@bpu.state.nj.us

Andrew Kuntz, Esq.
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Andrew.Kuntz@dol.lps.state.nj.us

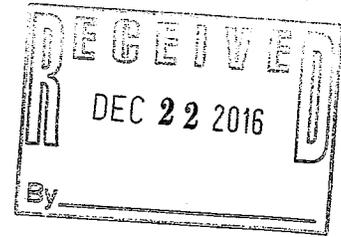
BOARD OF PUBLIC UTILITIES

DEC 22 2016

MAIL RECEIVED



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 Thom
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