

An evidentiary hearing was held on February 15, 2017.¹ Petitioner testified on his own behalf. Marianne Murphy, Senior Regulatory Assessor with PEPCO Holdings, and Robert C. Polk, Senior Engineering Associate with ACE, testified on behalf of Respondent.

Mr. Vega stated that he has no way of proving that the April 2015 bill reflects a correct reading because he is beholden to ACE. Nonetheless, he believes any reasonable person would question a \$1,700 bill in April. Mr. Vega also indicated that ACE imposed a \$1,600 security deposit following his questioning of the April 2015 bill. (T 62:7-13)

Petitioner testified he had never received an explanation on why the bill was so high, and thus, he was never able to provide a logical explanation to the tenant. Mr. Vega stated that the tenant was supposed to put the electricity in his own name, but was informed by the tenant that Respondent would not place the account in the tenant's name. Following failed efforts by Petitioner to have ACE place the account in the tenant's name, Mr. Vega testified that he kept the account in his name but made an agreement with the tenant that the tenant would pay the electric bill. In retrospect, Mr. Vega acknowledged a mistaken arrangement with his former tenant to keep the account in Petitioner's name.

Ms. Murphy testified regarding February 2010 to January 2017 billing statements and an accounts receivable history statement. She stated the last bill generated on the account was in January 2017 and the last actual meter reading was January 27, 2017. Ms. Murphy indicated that Exhibit R-3 is the billing statement showing a balance due of \$2,450.45.

Ms. Murphy acknowledged the April 2015 bill for the March 28, 2015 to April 28, 2015 period may have been incorrect, but subsequent meter readings trued up usage on the account. She explained Petitioner was bulk billed, meaning any under-billed usage was carried onto the subsequent April bill, which she alleged was more favorable to Petitioner. While inaccurate meter reading inputs are possible due to human input of visual usage readings by hand, she stated the meter itself is the check for any potential human input error. As the meter was tested to be accurate, she testified that no account adjustments were warranted.

Mr. Polk testified to meter testing and inspection results. He stated the meter for the property was first tested on February 28, 2011 to be 100.3% accurate and next tested on February 14, 2017 to be 99.95% accurate, both within range under Board rules. Mr. Polk stated the meter was shop-tested and returned to the property. (T 36:7-9)² He described the digital meter as a solid state device operating on electrical electronics, not a mechanical device with gears and coils to generate magnetic fields. While he noted the possibility for human error in computing basic math billing calculations, he stated meter inaccuracy is a sustained malfunction that will not self-correct; therefore, no situation exists where a meter presently performs inaccurately then at a later date performs accurately. The digital meter itself, he explained, is therefore the check against historical meter readings.

Following Mr. Polk's testimony, Ms. Murphy was recalled to the stand. She indicated that the March 2011 bill, Exhibit R-2, shows when the meter was exchanged at the property, March 10, 2011, as it reflects the reading for the meter that was removed and for the meter that was

¹ T refers to Transcript of February 15, 2017, hearing.

² While the witness testified that the meter was "returned," as will be disclosed later in the Board's analysis, it is more accurate to say that the meter was placed into service at the property after the February 2011 meter test.

installed. Specifically, the old meter registered consumption from February 25 through March 10, 2011 and the new meter registered consumption from March 10 through March 28, 2011.

ALJ Wilson issued an Initial Decision denying relief sought and dismissing the petition on March 7, 2017. The ALJ determined the billing period in dispute to be March 28, 2015 to April 28, 2015 (the "April 2015 billing period"). The ALJ found Petitioner had rented the property to a tenant and kilowatt usage on meter #349939263 was billed to Petitioner through account #xxx9043 as the account had never been transferred to the tenant. The ALJ reviewed N.J.A.C. 14:5-4.3(a) and N.J.A.C. 14:3-4.6(a), determining the meter was tested on two occasions, registering at 100.3 percent average accuracy on February 28, 2011 and registering at 99.95 percent average accuracy on February 14, 2017, and finding both amounts were not more than a two percent margin permitted; therefore, no adjustment is required in accordance with the regulations. The ALJ therefore concluded the meter was accurate. The ALJ further found no legally competent evidence to support a meter inaccuracy claim, concluding the resulting billing was appropriate based upon kilowatt usage for the period in dispute. Accordingly, the ALJ denied the relief sought, dismissed the petition and found the billing amount of \$2,450.45 as due and owing to ACE. ALJ Wilson, however, noted that the parties were free to enter into a repayment schedule pursuant to N.J.A.C. 14:3-7.7.

Pursuant to N.J.S.A. 52:14B-10(c), the Board issued an order on March 24, 2017, which was approved by the OAL, extending the time to issue a final agency decision.

Both parties were noticed of the Initial Decision, and exceptions were not filed.

DISCUSSION AND FINDINGS

Petitioner bears the burden of proof by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Petitioner is the customer of record, having been identified in account records as the person responsible for bill payment consistent with N.J.A.C. 14:3-1.1 and N.J.A.C. 14:3-7.1(a).

Exhibit R-2 reflects that from January 27, 2010 through March 10, 2011, meter #63418894 was registering consumption on the property. On March 10, 2011, meter #63418894 was removed and meter #349939263 was installed and began registering consumption on the property, as shown in R-2, the March 2015 bill. For reasons unclear in the record, meter #349939263 had been tested on February 28, 2011 prior to being installed on the property. Exhibit R-2 further shows that meter #349939263 remained on the property through January 27, 2017. And, Exhibits R-4 and R-5, respectively, establish that meter #349939263 registered at 100.3% average accuracy in February 2011 and registered at 99.95% average accuracy in February 2017.

Because meter #349939263 had been tested before and after the contested March-April 2015 period and because both tests show that the meter was operating within the permissible ranges, Petitioner failed to prove by a preponderance of evidence that the meter was inaccurate during the April 2015 billing period. Where billing is consistent with usage and the tested meter registers properly pursuant to N.J.A.C. 14:5-4.3(a) and N.J.A.C. 14:3-4.6(a), the utility has no basis to adjust the bill.

Exhibit R-3 reflects that on August 6, 2015, ACE assessed a deposit of \$1,665.00, and that amount is included in the balance of \$2,450.45, which was due and owing as of February 2, 2017. However, no testimony was provided on how that deposit was calculated. Therefore,

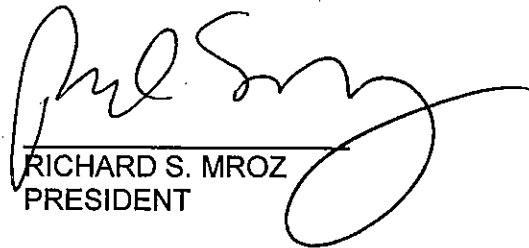
the Board **DIRECTS** ACE to ensure that the deposit and any return or credit of that deposit complies with N.J.A.C. 14:3-3.4 and N.J.A.C. 14:3-3.5.

Upon careful review and consideration of the record, the Board **AFFIRMS** the findings and conclusions in the Initial Decision as reasonable and supported by sufficient, competent, and credible evidence. Accordingly, the Board **ADOPTS** the Initial Decision and **DISMISSES** the petition.

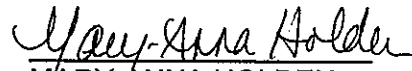
This Order shall be effective on June 10, 2017.

DATED: 5/31/17

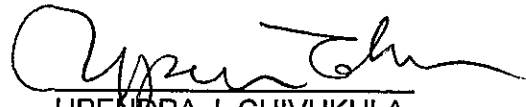
BOARD OF PUBLIC UTILITIES
BY:

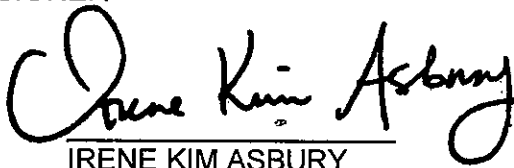

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

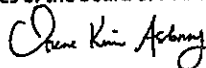

MARY-ANNA HOLDEN
COMMISSIONER


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



JOSE VEGA

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC15080973U

OAL DOCKET NO. PUC 18309-15

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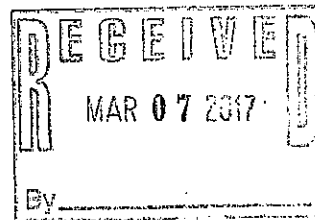
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BOARD OF PUBLIC UTILITIES

MAR 07 2017

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 18309-15

AGENCY DKT. NO. EC15080973U

JOSE VEGA

Petitioner,

v.

**ATLANTIC CITY ELECTRIC
COMPANY,**

Respondent.

Jose Vega, petitioner, pro se

Pamela J. Scott, Esq., for respondent Atlantic City Electric Company

Record Closed: February 15, 2017

Decided: March 7, 2017

BEFORE JEFFREY R. WILSON, ALJ:

CMS
v. Haynes
D. Lee Thomas
E. Hartsfield
J. Ford
H. Austerlitz
J. Gertsman
B. Agee
C. Vachier

STATEMENT OF THE CASE

The petitioner, Jose Vega, filed a billing dispute against Atlantic City Electric Company (ACE) with the Board of Public Utilities (BPU). ACE supplied electric service to a rental property owned by the petitioner. Petitioner disputed the billing for the month of April 2015. Petitioner contends that the meter must be inaccurate because he has never received a bill this high in his history of owning the property.

PROCEDURAL HISTORY

On August 14, 2015, the petitioner requested a fair hearing, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on November 10, 2015, to be heard as a contested case. N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on February 15, 2017, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Having considered all the testimony and read all the documents, I **FIND** the following as **FACT**:

The subject property is a 3,200 square foot, single family home located on County Road in South Dennis, New Jersey. The petitioner purchased the property in 1995 and rented it out to the same tenant during the relevant period. ACE supplied electric service to the subject property. The kilowatt useage was monitored on Meter #349939263 (the Meter) and billed to the petitioner through Account #XXXX9043.

On April 30, 2015, ACE issued a bill to the petitioner in the amount of \$1,748.23 for the period of March 28, 2015, through April 28, 2015. This billing was based upon the usage of 9,684 kilowatts during the thirty-two day period. The Electric Supply Charges totaled \$1,044.14 and the Electric Delivery Charge was \$704.09. Due to adjustments made to the account for fluctuating payments, the actual amount due as of the day of this hearing was \$2,450.45.

At all relevant times, the petitioner rented the property to the same tenant. The tenant leased the property for approximately five years. The tenant never transferred the account to his name. The petitioner experienced many problems with the tenant including the unauthorized subletting of rooms and failure to maintain the property. The petitioner ultimately took legal action and had the tenant evicted. The petitioner never read the Meter at the subject premises.

The Meter was tested on two separate occasions by ACE. On February 28, 2011, the meter test revealed a Full Load reading of 100.03 percent, a Light Load reading of 100.03 percent with a Power Factor of 99.89 percent. This resulted in an average accuracy of 100.03 percent. On February 14, 2017, the meter test revealed a Full Load reading of 99.95 percent, a Light Load reading of 99.5 percent, with a Power Factor of 99.96 percent. This resulted in an average Accuracy of 99.952 percent.

Jose Vega testified that he had been a customer of the ACE for over twenty years. He zealously and eloquently voiced the frustrations he experienced in dealing with ACE. He contended that it was reasonable for him to dispute the billing and that he never received a logical explanation as to why the bill was so high.

LEGAL ANALYSIS AND CONCLUSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

N.J.A.C. 14:5-4.3(a) provides:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

N.J.A.C. 14:3-4.6(a) provides:

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, 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.

In this case, the Meter was tested on two separate occasions. On February 28, 2011, the average accuracy was 100.03 percent. On February 14, 2017, the average

accuracy was 99.952 percent. Being not more than two percent over or under 100 percent on both tests, I **CONCLUDE** the meter was accurate in accordance with the regulation.

Here, the petitioner provided no legally competent evidence to support the claim that the meter was inaccurate. I therefore **CONCLUDE** that the resulting billing was appropriate based upon the kilowatt useage for the period in dispute.

ORDER

It is therefore **ORDERED** tha the relief sought by petitioner is **DENIED** and the action filed by petitioner is **DISMISSED**.

It is further **ORDERED** that the amount due to ACE by the petitioner as of the date of this hearing was \$2,450.45 which shall be paid forthwith.¹

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.

¹ The parties may enter into a repayment schedule pursuant to N.J.A.C. 14:3-7.7.

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.



March 7, 2017

DATE

JEFFREY R. WILSON, ALJ

Date Received at Agency:

Date Mailed to Parties:

JRW/dm

APPENDIX

LIST OF WITNESSES

For Petitioner:

Jose Vega

For Respondent:

Marianne Murphy

Robert Polk

LIST OF EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Customer Usage Statement
- R-2 Photocopies of Bills, February 2010, through January 2017
- R-3 Billing Statement, February 2015, through February 2017
- R-4 AMI Device Management – Meter Records Data base, dated February 28, 2011
- R-5 AMI Device Management – Meter Records Data base, dated February 14, 2017
- R-6 Photograph of Meter #349939263