



Date Board mailed Order to OAL: 3/27/20

cc: Service List Attached

DATED: 3/30/2020



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ELLEN S. BASS, ACTING DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 3/30/2020

Date Board mailed executed Order to Parties: 4/9/2020

**CALLEREMI CADILLAC BUICK GMC, PETITIONER**

**V.**

**JERSEY CENTRAL POWER AND LIGHT COMPANY. RESPONDENT**

**BPU DOCKET NO. EC19090999U  
OAL DOCKET NO. PUC 15018-19**

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State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

RECEIVED  
CASE MANAGEMENT  
MAR 05 2020  
BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

INITIAL DECISION

OAL DKT. NO. PUC 15018-19

AGENCY DKT. NO. EC19090999U

**CALLAREMI CADILLAC BUICK GMC,**

Petitioner,

v.

**JERSEY CENTRAL POWER AND  
LIGHT COMPANY,**

Respondent.

**Noel E. Schablik, Esq.,** for petitioner

**Joshua R. Eckert, Esq.,** for respondent

Record Closed: February 10, 2020

Decided: March 5, 2020

BEFORE **BARRY E. MOSCOWITZ, ALJ:**

STATEMENT OF THE CASE

From March 26, 2013, through March 13, 2019, Jersey Central Power and Light Company (JCP&L) applied the wrong meter constant to Callaremi Cadillac's electric bill and seeks \$38,256.70 for the services it provided Callaremi Cadillac during that time period. Must Callaremi Cadillac pay this adjustment? Yes. Under JCP&L Tariff for Service, BPU No. 12 Electric, Original Sheet 11, Section 3.06, JCP&L may adjust charges

CMS  
K. Graham  
D. Thomas  
J. Ford  
R. Lambert  
R. Matos  
K. Flynn  
P. Owen

due when a meter fails to register within the limits prescribed by the Board of Public Utilities (BPU) or for any other legitimate reason.

### PROCEDURAL HISTORY

From June 29, 2009, through September 14, 2009, the electrical usage at Callaremi Cadillac was measured by Meter S07018655, and the meter constant for this account was 30.

On February 15, 2019, JCP&L exchanged the meter for Meter S322924098, for a periodic scheduled replacement, and the meter constant for the account remained 30.

On February 19, 2019, JCP&L performed an audit and determined that the meter constant for the account was in error, that it was 30, when it should have been 40.

On March 6, 2019, the determination was verified.

On April 23, 2019, JCP&L notified Callaremi Cadillac that for the billing period March 26, 2013, through March 13, 2019, it owed a billing adjustment of \$33,467.65. Yet during that time period, Suez Energy Resources, N.A.; Direct Energy Business, LLC; and Hudson Energy Services, LLC, Callaremi Cadillac used third-party energy suppliers for its electric generation service. Given this discovery, JCP&L notified Callaremi Cadillac that it owed a revised adjustment of \$38,256.70 based on charges from these third-party suppliers.

On August 14, 2019, Callaremi Cadillac filed a complaint with the BPU, and on September 6, 2019, Callaremi Cadillac filed a verified petition against JCP&L.

On October 7, 2019, JCP&L filed a verified answer.

On October 23, 2019, the BPU transmitted the case to the Office of Administrative Law (OAL) as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-

1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On January 3, 2020, Callaremi Cadillac filed a motion for summary decision; on January 31, 2020, JCP&L filed its opposition and cross-motion for summary decision; and on February 10, 2020, Callaremi Cadillac responded to the opposition and cross-motion.

### **FINDINGS OF FACT**

Based on the documents the parties submitted in support of and in opposition to the motions for summary decision, I **FIND** the following as **FACT** for purposes of these motions only:

#### **I.**

Callaremi Cadillac has been a customer of JCP&L, receiving non-residential electric service at 385 U.S. Highway 46, Hackettstown, New Jersey, under account number 100000093565, since September 16, 1974.

#### **A.**

From June 29, 2009, through February 14, 2019, the electric usage at Callaremi Cadillac was measured by Meter S07018655, and during this time the meter constant for the account was 30.

On January 21, 2019, a Meter Work Notification was issued for the scheduled replacement of the meter; on February 15, 2019, the meter was exchanged for Meter S322924098; and on February 18, 2019, a Meter Work Notification was issued to determine the appropriate meter constant.

As JCP&L explains in the Affidavit of Doug Meneeley, its supervisor for regional operations, a meter constant is a number used in the calculation of a customer's usage

when the amount of energy is too large to be registered on a meter display, which JCP&L's billing system tracks and later uses for billing purposes:

A meter constant is a number used in the calculation of a customer's usage in certain circumstances based on the customer's elective service configuration. It is necessary to use a meter constant to determine a customer's actual usage when the amount of energy is too large to be registered on a meter display. To resolve this issue, JCP&L uses current transformers to reduce the electric current before it enters the meter (generally referred to as a current "step-down") and current transformers on the customer's side of the meter to bring the electric current back to how it was before the meter (generally referred to as a current "step-up"). The ratio at which the current transformers step-down and step-up the current is the same on each side of the meter. It is this ratio that is referred to as the meter constant. JCP&L's billing system keeps track of the meter constant for electric services that use current transformers. To determine a customer's actual usage for billing purposes, JCP&L must "subtract[] the number displayed on the customer's meter at the end of the billing period from the number displayed on the customer's meter at the end of the prior billing period, and then multiply[] the resulting number by the meter constant."

B.

On February 19, 2019, JCP&L performed the audit of the meter constant at Callaremi Cadillac and determined that the appropriate meter constant for service at the property is 40; on February 21, 2019, another Meter Work Notification was issued to verify the results of the audit; and on March 6, 2019, JCP&L returned to Callaremi Cadillac and verified that the appropriate meter constant for service at the property is 40.

The appropriate meter constant for a service is independent of the specific meter used to register the service—provided the meters are of the same type. In this case, the meters at issue—Meter S07018655 and Meter S322924098—are of the same type. Thus, the meter constant for the account at issue is the same—irrespective of the meter used.

Accordingly, on April 23, 2019, JCP&L informed Callaremi Cadillac that it would be adjusting or rebilling the account to correct this error, and at that time provide a detailed calculation of the billing adjustment to be performed.

The total amount of the billing adjustment was \$33,467.65 for the period March 26, 2013, through March 13, 2019.

C.

On April 29, 2019, JCP&L issued an invoice to Callaremi Cadillac containing the additional charges and offered Callaremi Cadillac a deferred payment plan that would allow Callaremi Cadillac to pay these additional charges over a period of six years, but Callaremi Cadillac rejected the offer and appealed the determination because Callaremi Cadillac did not want to admit to any liability, not because it did not want to enter into a payment plan if it were ultimately ordered to pay the additional charges.

Yet during the rebilling period, Callaremi Cadillac used third-party suppliers for its electric generation service:

- From December 21, 2011, through July 24, 2013, Callaremi Cadillac used Suez Energy Resources, NA
- From July 25, 2013, through December 11, 2018, Callaremi Cadillac used Direct Energy Business, LLC
- From December 12, 2018, through at least October 7, 2019, Callaremi Cadillac used Hudson Energy Services, LLC.

Given this discovery, JCP&L notified Callaremi Cadillac that it owed a revised adjustment of \$38,256.70 based on charges from these third-party suppliers.



II.

Michael Callaremi is the president of Callaremi Cadillac Buick GMC, Inc. He has worked at the dealership full time since 1970, working his way through the service department and the sales department until he became the supervisor for the sales department, and ultimately for the dealership in 1989. As such, Callaremi is fully familiar with the business and operation of the dealership—including the regular review of the electric bill to make sure it is aligned with its actual usage—and he has never seen an electric bill that was not aligned with its actual usage. As Callaremi certified, “Not once did I notice an electric bill to be aberrantly high or aberrantly low.”

Callaremi also certified that during the time Meter S07018655 was in place, it was housed in a secure area within the dealership and has never been damaged or tampered with.

In short, Callaremi certified that he had never had any reason to call JCP&L to repair the meter or adjust the bill.

Callaremi further certified that he did not have an opportunity to inspect the meter either before or after it was replaced—to verify whether it was tampered with, whether there had been any theft of service, whether it had failed to register, or whether there was any other reason why the bill did not reflect actual usage—and assumed that it had been working properly throughout its period of usage and was in no need of adjustment.

This is the prism through which Callaremi sees this case. But Callaremi is mistaken. The issue is not whether the meter was tampered with, whether there was any theft of service, or whether the meter failed to register.

The issue is whether JCP&L applied the correct meter constant in the calculation of Callaremi Cadillac's usage during the period at issue for billing purposes.

## CONCLUSIONS OF LAW

### I.

A party may move for summary decision upon any or all substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). The motion for summary decision shall be served with briefs and may be served with supporting affidavits. Ibid. "The decision sought may be rendered if the papers and discovery [that] have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). Having reviewed the briefs with the supporting affidavits, I **CONCLUDE** that no genuine issue of any material fact exists given the record before me, and that this case is ripe for summary decision.

### II.

#### A.

To begin, Callaremi argues that N.J.A.C. 14:3-4.6(d) governs this dispute. This regulations states that if a meter fails to register 100 percent of service, the charges shall be adjusted, and that the customer shall be required to pay the undercharges—but only under certain circumstances. Those circumstances include when the meter has been tampered with, when there has been theft of service, when the meter has failed to register at all, or when the customer should have reasonably known that the bill did not reflect usage:

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.

[N.J.A.C. 14:3-4.6(d).]

In this case, no meter at Callaremi Cadillac failed to register 100 percent of service. JCP&L simply undercharged Callaremi Cadillac because JCP&L applied the wrong meter constant, that is, JCP&L applied a meter constant of 30 instead of a meter constant of 40 in the billing calculation, for which it seeks a billing adjustment. That JCP&L applied the wrong meter constant is not disputed. Therefore, I **CONCLUDE** that the regulation Callaremi Cadillac cites as governing this case, N.J.A.C. 14:3-4.6(d), does not govern this case, and the fact that the meter was not tampered with, the fact that there had been no theft of service, and the fact that Callaremi did not know that the monthly bills did not reflect actual usage are not genuine issues of material fact relevant to the disposition of these motions or this case.

B.

The fact that N.J.A.C. 14:3-4.6(d) is referenced in JCP&L's tariff does not change this conclusion—nor does it limit the application of the tariff to those specific circumstances delineated in N.J.A.C. 14:3-4.6(d). That tariff section, Section 3.06, Billing Adjustments, merely limits the adjustment period. More specifically, Section 3.06 simply states, for purposes of these motions, that billing adjustments shall not be for periods of more than six years from the time the reason became known to the company:

**Billing Adjustments:** An adjustment of charges due to the Company for Services provided by the Company will be made when a meter fails to register within the limits of accuracy prescribed by the BPU in accordance with N.J.A.C. 14:3-4.6, or for any other legitimate reason, in which case such adjustment shall not be for a period of more than six years prior to the time the reason for the adjustment became known to the Company. (See N.J.A.C. 14:3-4.6)

[JCP&L Tariff for Service, BPU No. 12 Electric, Original Sheet 11, Section 3.06.]

Indeed, the “for any other legitimate reason” language contained in the tariff is a distinct category, distinguishable from the “when a meter fails to register within the limits of accuracy prescribed by the BPU in accordance with N.J.A.C. 14:3-4.6” language. See 2012 Base Rate Filing, 2015 N.J. PUC LEXIS 65, \*393–96 (where the BPU found the proposed revisions “to distinguish between billing adjustments for meter error as opposed to other legitimate reasons” reasonable).

Therefore, I **CONCLUDE** that JCP&L may adjust the charges due to its failure to apply the appropriate meter constant for the six-year time period referenced in the tariff.

C.

Since Callaremi Cadillac does not dispute the amount of the billing adjustment, \$38,256.70, for the six-year time period March 26, 2013, through March 13, 2019, I **CONCLUDE** that Callaremi Cadillac owes this amount as of the issuance of the order in this case, but that nothing precludes the parties as a matter of law from entering into a deferred payment plan, so Callaremi Cadillac can still pay this amount over a period of time.

**ORDER**

Given my findings of fact and conclusions of law, I **ORDER** that Callaremi Cadillac’s motion for summary decision is **DENIED**, that JCP&L’s cross-motion for summary decision is **GRANTED**, and that Callaremi Cadillac owes JCP&L \$38,256.70 for the services JCP&L provided Callaremi Cadillac from March 26, 2013, through March 13, 2019.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

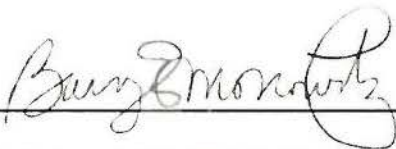
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify, or reject this decision within

forty-five days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision under 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.

March 5, 2020 \_\_\_\_\_

DATE

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**BARRY E. MOSCOWITZ, ALJ**

Date Received at Agency:

March 5, 2020 \_\_\_\_\_

Date Mailed to Parties:

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dr