



Agenda Date: 6/8/09

Agenda Item: 7A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

CUSTOMER ASSISTANCE

JAMES H. THOMAS,  
Petitioner,

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,  
Respondent.

) ORDER ADOPTING INITIAL  
) DECISION  
)  
)  
)  
) BPU DOCKET NO. EC08040220U  
) OAL DOCKET NO. PUC 4574-08

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed on April 2, 2008, James H. Thomas (Petitioner) alleged that he had been improperly billed by Jersey Central Power & Light Company (Respondent) for electric utility services. After receipt of Respondent's answer, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested matter on May 29, 2008.

On May 4, 2009, Administrative Law Judge (ALJ) Joseph F. Martone submitted his Initial Decision in this matter to the Board. A copy of the Initial Decision is attached hereto and made a part hereof. No exceptions to the Initial Decision have been filed with the Board.

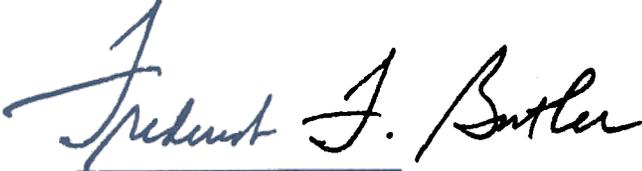
The procedural history of this matter and the ALJ's findings of fact and conclusions of law are set forth in the Initial Decision and need not be restated herein. After review and consideration of the record, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them.

Therefore, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of James H. Thomas be HEREBY DISMISSED.

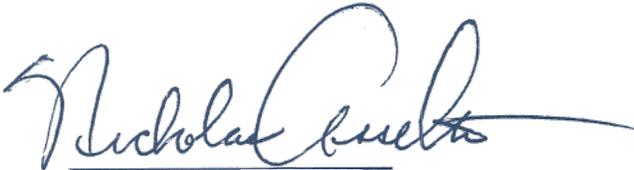
DATED: 6/10/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

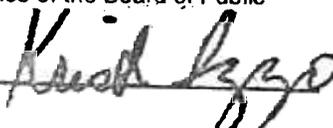
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

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



**JAMES H. THOMAS.**

**v.**

**JERSEY CENTRAL POWER & LIGHT COMPANY**

**BPU DOCKET NO. EC08040220U**

**OAL DOCKET NO. PUC 4574-08**

**SERVICE LIST**

James H. Thomas  
1 Horicon Road  
Lakehurst, New Jersey 08733

Michael J. Connolly, Esq.  
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CMS  
BESLOW  
RPA  
MILLER-HOLLAND  
KIRSCHBAUM  
~~POTA-LOU-AMT~~ (C)



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

AKS

**INITIAL DECISION**

OAL DKT. NO. PUC 4574-08

AGENCY DKT. NO. EC08040220U

**JAMES H. THOMAS,**

Petitioner,

v.

**JERSEY CENTRAL POWER & LIGHT  
COMPANY,**

Respondent.

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**James H. Thomas, petitioner, pro se**

**Michael J. Connelly, Esq., for respondent (Morgan Lewis, attorneys)**

Record Closed: April 6, 2009

Decided: April 30, 2009

BEFORE **JOSEPH F. MARTONE, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

This matter involves a dispute regarding billing for electrical services rendered to petitioner. Petitioner contends that his electric meter appears to be in error and he seeks a monetary refund in an unspecified amount for overpayment plus interest and costs. Respondent contends that the billing of petitioner's account was properly rendered for electric services as properly monitored by the meter.

This case was transmitted to the Office of Administrative Law (OAL) on June 10, 2008, for hearing as a contested case. It was assigned to me for hearing on July 2, 2008, and I scheduled a hearing for April 6, 2009, my first available date. On that date, a hearing was held and concluded and the record closed.

### **FACTUAL DISCUSSION**

This matter involves a dispute regarding billing for electrical services rendered by the respondent, Jersey Central Power and Light Company, to the home of James H. Thomas, the petitioner. Petitioner is a customer of respondent, receiving electricity at 1 Horicon Road, Lakehurst, New Jersey, 08733, account no. 10 00 20 5575 16. The petitioner is contesting the electrical bills for this account. He contends that despite his investment in energy saving home appliances, his drastic measures to conserve energy, his limited use of electricity and his many absences from home, his electric bills continue to escalate. He therefore argues that his electric meter must be in error and he seeks a monetary refund for an unspecified amount as an overpayment plus interest and costs.

Mr. Thomas testified on his own behalf. His testimony is that in 1970, he built the home in which he presently resides, and which is the subject of this dispute. He explained that no matter what steps he has taken and what he has done, and whether he was home or not home, and even on occasions when he disconnected his appliances, his electric bill continued to increase. He has called the respondent's complaint department a number of times, and his meter has been changed twice, but his bills keep increasing.

Mr. Thomas stated that he checked his electrical usage, and his usage is the same as that previously used. For example, he testified that on one occasion he was away from for thirty days and his electric bill went up. Two years ago his stove was changed from electric to gas, and he has purchased a new energy-saving washer and dryer, but nothing has helped. He resides alone, so there is no one else in the home to

use electricity. He gave other examples when he was away from October 3 to October 20, 2008, and again was away from July 21 to August 1, 2006.

Mr. Thomas also complained that there were eight estimated bills, but the subsequent bills, based on the actual readings, did not reflect any adjustments or credits to his bill. He also asked to place a monitor on the meter, but was told that it was Jersey Central Power and Light Company property and that he could not do so. On one occasion he was in Florida for thirty days to care for a family member, and while he was away from home, his electric bill went higher. He also testified that he saw electric bills for one of his neighbors, and the rate on the neighbor's bill was cheaper than his. He has been complaining about this for ten or eleven years, but has been given no satisfaction. He has a 78,000 gallon pool, but it has not been opened in five years. He has bottled gas for heat. He has no lights on at night. He has old TVs which he unplugs so they do not use electricity.

In 2006 and 2007, Mr. Thomas changed all of his appliances. He has a washer and dryer, but he hangs his clothes to dry. He has changed from an electric to a gas stove. His dishwasher broke, so he no longer uses it. He has no electric apparatus for the outside or the lawn, and he uses fluorescent bulbs in his lamps.

Mr. Thomas provided specific dates when he was away from home. In February 2006, he was away on February 16, 17, 18, 19 and 20. In March 2006, he was away for eight days. In April 2006, he was away for eight days. In May 2006, he was away for seven days. In June 2006, he was away for six days. In July 2006, he was away for 14 days and his air conditioner was turned on for only two days, on July 18 and 19, 2006. In August 2006, he was away for eight days. In September 2006, he was away for nine days. In October 2006, he was away for eighteen days. In November 2006, his hot water heater was not operating. Also in November 2006, he was away from home for seven days. In December 2006, he was away for twelve-and-a-half days. In August 2007, he was away for ten days. In February 2008, he was away for four days, and in March 2008, he was away for four days. He indicated that when he viewed a

neighbor's electric bill, their price per kilowatt hour was different. In September 2006, his grandchild was born, and he had to stay with his daughter for thirty days in Florida.

On cross-examination, Mr. Thomas confirmed that he lives alone. He lives in a 2,600 to 2,700 square foot, four-bedroom ranch home. It has a pool with a capacity of 78,000 gallons of water, but the pool was covered four to five years ago and has not been used since. He replaced the electric hot water heater in 2006 or 2007. He was told that it uses a great deal of electricity, so he turns it off whenever he is away from home or on other occasions. He has no dishwasher in the house at present. He now uses his washer and dryer. However, his bill is not the same as others, and the make-up of his bill is not the same as others. He understands there have been rate increases over time. He admitted that he pays the bill a few months at a time, whenever he feels like it. The house has four bedrooms, two-and-a-half baths and it has a dining room, living room, kitchen and laundry room, and a crawl space. There were ten estimated readings between 2004 and 2008. He does not recall receiving a letter from the complaint department dated August 3, 2007 (R-1).

Barbara Sheridan, Regional Customer Advocate for the Jersey Central Power and Light Company, testified in that she has been employed by Jersey Central for ten years, and has been in her present position for two-and-a-half years. Her prior employment history includes being a supervisor and being employed in customer accounting. She explained that she handles complaints and reviews billing when the company receives a complaint from the customer, or from some other agency or arm of government.

Ms. Sheridan testified that she is familiar with Mr. Thomas and his complaints. This came through the Board of Public Utilities and it was a high-bill complaint. The records indicate there was a meter change in 2005, and the high bill complaint occurred afterwards. She checked the billing to see if it was out of line. She identified the billing record for the petitioner from February 22, 2005 through March 20, 2009 (R-2). The column headed "RT" indicates the reading type, and "01" means an actual meter

reading, "14" means that it is outside of the expected amount, and "03" means it is an estimated reading.

Ms. Sheridan testified that the petitioner's consumption is in line with that of other similar customers. There have been consistent rate increases over the past few years that explain the increase in his bills. (R-3). She explained that Jersey Central Power and Light Company is a distributor. It purchases power at auction and passes on the actual cost of the purchase to the consumer. The distribution charges are costs incurred by Jersey Central Power & Light Company for providing electricity. These costs are passed onto the customers, dependent on the meter readings, for calculating the charges.

Ms. Sheridan identified a portion of the tariff filed by Jersey Central Power & Light Company with the Board of Public Utilities. (R-4). She referred to Sections 3.01 and 3.05 as relevant to this case. She testified Company's records show the prior meter was removed on September 11, 2005, and tested because of the high bill complaint, and the present meter was installed on September 12, 2005 (R-8).

A high bill analysis was done on March 9, 2008 (R-5), in response to a call from Mr. Thomas. The summary of this analysis was that his home, with his occupancy at this location could be using 1,826 kilowatt hours per month. Ms. Sheridan explained that this high bill analysis is a computer program which analyzes the average usage based on the number of people in a home and the size of the home. The meter readings (R-2) reflect less usage amounts for the petitioner than the average.

On cross-examination, Ms. Sheridan testified she has a college background and two months of training, as well as ten years of experience in her position. She admitted that all the information concerning the meter readings was supplied to her by Jersey Central Power and Light Company. With respect to the high bill analysis (R-5) she does not know where the statistics came from. It is a calculation based upon statistics compiled by the company. She admitted that petitioner was never terminated or disconnected. She assumes that new appliances save energy. She also explained that

there are different residential rates, and that some customers have a time-of-day rate and others use a general residential rate. A customer may choose which rate to use.

When further questioned by petitioner, Ms. Sheridan also explained why he never received an adjustment on a subsequent bill for an estimated reading on a prior bill. She attempted to explain that any estimated bills are corrected by the subsequent bill based on actual readings, and that he would only have received a credit if he paid his prior bill. If there was payment made on an estimated bill and it turned out that there was an overcharge, a credit would have been given on the next month's bill. This never occurred in petitioner's case.

Anthony Menio testified that he has been employed by Jersey Central Power and Light Company for nineteen years and is a metering supervisor for Central New Jersey. He is employed in the meter services department and he oversees sixteen meter maintenance employees in this department. He was a first-class meter tester for thirteen years. He learned meter maintenance and testing through one year of training and on the job training. He is also familiar with the company's records. He identified the record of meter installation at petitioner's home (R-8). The first meter of record was installed in October 1998 and removed on September 11, 2005. The present meter was installed on September 12, 2005, and remains there at the present time. (R-8).

Mr. Menio testified he had twelve weeks of training in the classroom with respect to meter testing and three weeks per month. He is also trained in how they work and in troubleshooting them as well as repairing them. He indicated it is rare to find a meter that is not complying with the specifications. Sometimes it is one-half to one percent off, but in such an event the meter is replaced. These meters are electromechanical devices with a fifty-year life. He and the other technicians are given training whenever new meters are purchased. He admitted that all of the training comes from Jersey Central Power and Light Company.

Mr. Menio testified with respect to the meter testing record for the meters located at these premises. (R-8 and R-9). He explained that a meter is tested for

accuracy under a light load and then under a full load, and the standard specification required to be met is 99.5% to 100.3%. The meter that was removed from the home on September 11, 2005 (R-8), was tested and found to be accurate at a rate between 99.57% and 99.80% (P-9 at A-1). This meter was found to be accurate based on this testing. In addition the meter installed at the home on September 12, 2005, was tested prior to its installation. As a result of this testing, it was found to be accurate at a rate between 99.62% and 99.83% (P-9 at A-2). This replacement meter was also found to be accurate within the specifications based on this testing.

On cross-examination, Mr. Menio admitted that there is nothing on the meter that can make it go faster or slower. They are sealed by the manufacturer and they are just plugged in. There are two seals, one on the bottom and one in the back. Only company employees can re-seal these meters, and only he has the seals. He has heard of people tampering with meters and they are prosecuted all of the time. The State of New Jersey calibrates the calibrator or testing equipment every six months. The calibrator cannot be self-calibrated and must be hand-calibrated. If there is a power surge by lightening, it can cause a malfunction.

Mr. Menio stated that the calibration standards are sent out for re-calibration every six months under State of New Jersey supervision. In addition, a sample or certain number of meters are tested each year and they must pass the test each year. He indicated that no one turns off the breakers when they leave the home. In the field, individuals have hand-held computers and there may be meter reading errors, but they re-correct themselves the next time the meter is read.

### **LEGAL DISCUSSION AND ANALYSIS**

In this case, the petitioner has raised the question of the accuracy of the electric meters installed at the premises. He asserts that they must be inaccurate because of the steps he has taken to conserve electricity, but his bill keeps going up. Thus, the issue is whether, under the circumstances of this case, the petitioner is obligated to pay electric bills based on actual meter readings.

The petitioner's proofs regarding the inaccuracy of the two electric meters that have been installed at his premises may be summarized as follows:

1. Despite his investment in energy saving home appliances, his drastic measures to conserve energy, his limited use of electricity and his many absences from home, his electric bills continued to escalate.
2. No matter what steps he has taken and what he has done, and whether he was home or not home, and even on occasions when he disconnected his appliances, his electric bill continued to increase.
3. On one occasion, he was absent from home to care for a family member for thirty days and his electric bill went up.
4. Two years ago his stove was changed from electric to gas, and he has purchased a new energy-saving washer and dryer, but nothing has helped.
5. There were eight estimated bills, but the subsequent bills, based on actual readings, did not reflect any adjustments or credits to his bill.
6. His 78,000 gallon pool has not been opened in five years.
7. He has bottled gas for heat.
8. He has no lights on at night.
9. He has old TVs which he unplugs so they do not use electricity.
10. In 2006 and 2007, petitioner changed all of his appliances.
11. He has a washer and dryer, but he hangs his clothes to dry.
12. He has changed from an electric to a gas stove.
13. His dishwasher is broken, so he no longer uses it.
14. He has no electric apparatus for the outside or the lawn, and he uses fluorescent bulbs in his lamps.
15. He replaced the electric hot water heater in 2006 or 2007. He was told that it uses a great deal of electricity, so he turns it off whenever he is away from home or on other occasions.

This case is governed by the provisions of the applicable regulations and the respondent's tariff. A tariff is a published schedule of rates, filed by a public utility, and

thereafter, in the absence of successful challenge, is applicable equally to all customers. Its application may or may not have been preceded by a rate-making hearing. Such a tariff is not a mere contract. It is the law, and its provisions are binding on a customer whether he knows of them or not. Application of Saddle River, 71 N.J. 14, 29 (N.J. 1976); Essex County Welfare Bd. v. New Jersey Bell Tel. Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974).

The respondent's tariff (R-4) specifically provides in Section 3.01:

**Measurement of Electricity Consumption:** The Service provided to the Customer will be measured separately for each Point of Delivery by metering. Bills will be based upon the registration of such metering equipment except as may be otherwise provided in this Tariff. Such registration shall be conclusive as measuring the quantity of Service received by the Customer except when the metering equipment fails to register or is determined to be registering outside the limits of accuracy prescribed by the BPU.

N.J.A.C. 14:3-4.4(a) requires a utility such as the respondent to ensure that its meter testing equipment is tested and either sealed or certified each time the equipment is moved, except if it is portable, each time the security seal on the equipment is broken, each time the equipment is cleaned, handled or maintained in any way that could affect its accuracy, and every 12 months. In order to comply with this testing requirement N.J.A.C. 14:3-4.4(b) requires a utility to either have its meter testing equipment tested and sealed by NJ Weights and Measures; or have its meter testing equipment tested and certified by a laboratory approved and recognized by the National Institute of Standards and Technology (NIST) with testing equipment traceable to NIST; and prior to utilizing the equipment for compliance with this subchapter, submit to the Board a written approval, issued by the Superintendent of NJ Weights and Measures, accepting the laboratory that performed the certification for purposes of compliance with this subchapter. N.J.A.C. 14:3-4.4(d) requires a utility to make its meter testing equipment available at all reasonable times for inspection and/or use by Board staff or its designees.

In this case, the petitioner testified at length concerning his efforts to reduce his electric bill, and provided the testimony detailed in the factual discussion. I do not doubt the petitioner's credibility, and I **FIND** his testimony that he has made every effort to conserve electricity to be truthful. However, I **FIND** that petitioner's proofs and evidence provide no basis on which to quantify the results of his efforts to save electricity. In effect, the petitioner's proofs require speculation as to the effectiveness of these efforts because they are not capable of being measured. Additionally, I **FIND** that I have no way of knowing if the petitioner's conservation efforts may have been outstripped by the ever-increasing costs of electricity. I **FIND** that in the absence of some realistic method of measuring the amount of petitioner's efforts to conserve electricity, and offsetting it against the increase in the rates, I have no way to calculate his claim.

I also have no doubt as to the credibility of Mr. Menio with respect to his testimony and **FIND** him to be credible. He testified concerning his extensive training in both the testing and repair of electric meters and his work experience in the metering of electricity. He also testified as to the accuracy of the two electric meters that had been installed at the petitioner's home. I **FIND** to be credible Mr. Menio's testimony that these two meters were subjected to testing in compliance with N.J.A.C. 14:3-4.4 and they were found to be accurate in accordance with the standard specification requirement of 99.5% to 100.3%.

I **FIND** that this case is governed by the provisions of the tariff filed by Jersey Central Power & Light Company with the Board of Public Utilities. (R-4). I **FIND** that the electric service provided to the customer is measured by metering, and under the terms of the tariff, bills based upon the registration of such metering equipment shall be conclusive as measuring the quantity of service received by the customer. Since I have found the metering equipment to be accurate and the petitioner's proofs to be speculative, I **FIND** that the petitioner's claim of overpayment must fail and should be **DISMISSED**.

**DECISION AND ORDER**

For the reasons stated above, I hereby **ORDER** that this matter, involving a dispute regarding billing for electrical services rendered to petitioner in which the petitioner claims that his electric meter is in error and seeking a monetary refund in an unspecified amount for overpayment plus interest and costs, 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 (45) 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.

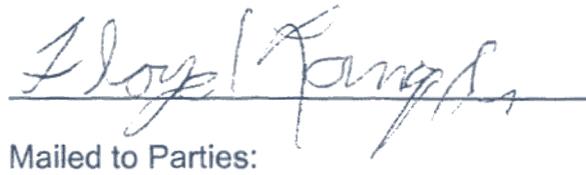
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 30, 2009  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
JOSEPH F. MARTONE, ALJ

Date Received at Agency: 5-4-09



Mailed to Parties:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OFFICE OF ADMINISTRATIVE LAW

mph/jfk

**APPENDIX**

**LIST OF WITNESSES:**

**For petitioner:**

James H. Thomas

**For respondent:**

Barbara Sheridan

Anthony Menio

**LIST OF EXHIBITS:**

**Petitioner's Exhibits:**

None

**Respondent's exhibits:**

Jersey Central Power and Light Company Compliance Department letter,  
dated August 3, 2007

Billing record for petitioner from February 22, 2005 to March 20, 2009

Jersey Central Power and Light Company letter, dated June 26, 2008 with  
detail statement of account attached.

Excerpt from Jersey Central Power and Light Company Tariff, Section 3  
entitled Billings, Payments, Credit Deposits and Metering.

High bill analysis, dated April 9, 2008

March 24, 2006 bill

April 25, 2006 bill

R-8 Meter installation record for petitioner's premises

R-9 Meter testing records for meters installed at petitioner's premises.