

request and ordered that an on-site inspection of Petitioner's electrical meter be conducted on July 25, 2008. The letter order advised the parties that ALJ Miller would be present at the inspection, and copies of the letter order were distributed by electronic mail and fax. Telephone notice of the order was also provided. The on-site inspection was attended by ALJ Miller and representatives for Respondent. A subsequent letter dated July 28, 2008 from Respondent's counsel to the Petitioner and ALJ Miller detailed the observations made by Charles Thomas, an employee of Respondent. As noted in the Prehearing Order and in a Notice of Plenary Hearing dated June 23, 2008, a hearing was scheduled for August 6, 2008. Petitioner did not appear at the hearing, and as a result of Petitioner's failure to appear, the matter was returned to the Board. In a subsequent letter to the Board, Petitioner Jules Tonkinson explained his failure to appear at the scheduled hearing, claiming that he was unable to appear for medical reasons, and the matter was remanded to the OAL and for hearing.

In a notice dated October 17, 2008, the parties were advised that a plenary hearing was scheduled for January 6, 2009. Petitioner did not appear at the scheduled hearing, and the hearing proceeded with testimony from two witnesses for Respondent.

On January 8, 2009, ALJ Miller submitted his Initial Decision in this matter to the Board. A copy of the Initial Decision is attached. In his Initial Decision, ALJ Miller found that Petitioner had sufficient notice of the January 6, 2009 plenary hearing and that the notice provided by the OAL was not returned as undeliverable. Furthermore, there was no request for a postponement by the Petitioner and no communications from the Petitioner were received. Accordingly, ALJ Miller concluded that the Petitioner had sufficient notice of the scheduled hearing and that there were no reasons to warrant an adjournment of the January 6, 2009 hearing.

ALJ Miller also found that due to Petitioner's failure to appear at the scheduled hearing, the Petitioner's billing dispute claim was deemed resolved. Finally, ALJ Miller concluded that Respondent is authorized to discontinue service pursuant to N.J.A.C. 14:3-3A.1(a)(5) due to a hazardous corrosion of terminals within an electrical socket on Petitioner's property. ALJ Miller noted that this action is not intended to be punitive and the need to repair the socket is exclusive of any outstanding balance owed to Respondent. Based upon the foregoing, the ALJ dismissed the action and ordered that ACE may pursue the appropriate remedies.

Exceptions to the Initial Decision were filed with the Board by the Petitioner and received on January 23, 2009, with Replies to Exceptions submitted by the Respondent and received by the Board on January 28, 2009.

In the Exceptions, the Petitioner alleges that: (1) Petitioner was provided with no notice of the hearing scheduled for January 6, 2009; (2) Respondent, prior to the scheduled hearing date, never supplied Petitioner with requested information (discovery) or information pertaining to the on-site inspection, which Petitioner argues would have been a clear indication of the hearing date; (3) Respondent's counsel never contacted Petitioner Lisa Tonkinson prior to the scheduled hearing date although in possession of a power of attorney executed by Petitioner Jules Tonkinson; (4) ALJ Miller failed to respond to Petitioner's request that he be removed from the case because the on-site inspection was conducted *ex parte* as the Petitioner could not attend due to a legitimate medical excuse; and (5) Respondent and the Board have never responded to the request by Petitioner Lisa Leonard Tonkinson to change the name of the account customer of record. Finally, Petitioner requests that the matter return the case to the OAL for a new hearing.

In its Reply, Respondent objects to Petitioner's request that the matter be returned to the OAL. Respondent questions the legitimacy of Petitioner's claim that no notice of the hearing date was

provided despite receiving the Initial Decision, which was sent to the same mailing address noticed for trial. Respondent also argues that each paragraph of the Exceptions directed toward Respondent is false and that Respondent can provide proof of its falsity if requested. Finally, Respondent requests that the Board sustain ALJ Miller's dismissal of the matter.

Discussion

After review and consideration of the entire record, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them. The Board further FINDS that the Exceptions to the Initial Decision filed by the Petitioner are without merit.

As stated above, Petitioner requests that the matter be returned to OAL for a new hearing and argues, among other concerns, that no notice was provided referencing the hearing date. As noted by ALJ Miller, the hearing notice was sent to the Petitioner at the same address to which all prior notices had been directed and was not returned to OAL undelivered. A review of the Notice of Plenary Hearing dated October 17, 2009 lists Jules and Lisa Tonkinson, otherwise referred to as Petitioner herein, on the attached Service List of Parties. Additionally, the mailing address provided on the Service List is identical to the mailing address provided on other correspondence, including the return address provided in the letter containing Petitioner's Exceptions. Moreover, Petitioner suggests that had Respondent provided Petitioner with responses to its outstanding discovery requests, there would have presumably been some reference to the scheduled hearing date. As it is the OAL's responsibility to provide notice to parties and not the Respondent's responsibility, and the record supports the conclusion that notice was sufficiently provided, the Board finds that Petitioner's claim that no notice was provided is without merit. See N.J.A.C. 1:1-9.5 (b).

Petitioner also argues that information regarding the on-site inspection was not made available. It is unclear as to what specific information Petitioner is referring. However, as noted in the Initial Decision, Respondent did detail its employee's observations made during the inspection of Petitioner's meter in a letter dated July 28, 2008.² In that letter, Respondent's counsel wrote that the employee, a troubleman³, completed a safety inspection of the meter and meter socket. It was the troubleman's observation that the socket showed rust, which prevented the socket's jaw from making full contact with the male portion of the meter. The letter also included the troubleman's opinion that this lack of contact would likely cause a flickering of service, and it was also the troubleman's recommendation that the socket be examined and repaired by an electrician. Additionally, the letter advised that because the socket is customer owned, such repairs are the responsibility of the customer. For the reasons stated above, the Board finds that Petitioner's claim that information regarding the inspection was not available is without merit.

Within the Exceptions, Petitioner argues that ALJ Miller did not respond to Petitioner's request that the ALJ be disqualified from hearing the case, because he "participated in an ex parte examination of the damage to [the] electrical socket." Upon review of the record, there is no indication that Petitioner made a request or filed an appropriate motion to disqualify ALJ Miller. Additionally, ALJ Miller's Order of July 24, 2008 granting Respondent's Emergent Motion for an Order Authorizing Meter Inspection advised the parties that a joint inspection of the electric meter would take place on July 25, 2008. According to the Order, copies of the Order and

² The July 28, 2008 letter is referred to as Exhibit C-1 in the Initial Decision and as ACE-6 in the Transcript of the January 6, 2009 hearing.

³ According to testimony at the January 6, 2009 hearing, a troubleman is charged with inspecting and troubleshooting residential and commercial electric services and substations.

notice of the inspection were provided to all parties by electronic mail, fax and telephone. The Board finds that the Petitioner's claim that ALJ Miller failed to respond to an alleged request that the ALJ disqualify himself is without merit because the record does not show that such a request was made and because Petitioner has not provided any documentation to support its claim that a request for disqualification was filed.

Petitioner argues that the on-site inspection was scheduled regardless of Petitioner's previously-scheduled surgical procedure and due to Petitioner's absence, the inspection was conducted *ex parte*. There is nothing in the record to suggest that Petitioner raised this scheduling concern with ALJ Miller or the other parties prior to the inspection. Furthermore, as indicated in the letter order authorizing the inspection of July 25, 2008 and in the Initial Decision, there were several telephone discussions regarding the scheduling of an inspection of the Petitioner's electric meter and there were repeated attempts to conduct the inspection of the electric meter. Additionally, Petitioner was informed of Respondent's observations made during the inspection in a letter dated July 28, 2008 and distributed to Petitioner and ALJ Miller. Finally, the troubleman present at the inspection on July 25, 2008 testified at the January 6, 2009 hearing and was available for cross examination. The troubleman's testimony, the July 28 letter detailing the observations made at the inspection and ALJ Miller's account of the troubleman's observations are all consistent.

Additionally, even if the Board were to conclude that the one-day notice of the July 25, 2008 inspection was not sufficient, Petitioner was not prejudiced by the short notice because Petitioner was informed in a timely manner of the observations made by the Respondent's employee and the employee testified at the January 6, 2009 hearing. Furthermore, the utility has a right of reasonable access to a customer's premise for purposes of inspecting property furnished by the utility. N.J.A.C. 14:3-3.6 (a) For these reasons, the Board finds that Petitioner's allegation that the inspection of the electric meter on July 25, 2008 was improper is without merit.

Petitioner's claims that counsel for Respondent failed to contact Petitioner Lisa Leonard Tonkinson despite an executed Power of Attorney and Petitioner's claim that neither Respondent nor the Board have responded to Petitioner Lisa Tonkinson's request to change the ownership of the account are unrelated to the facts of this matter or the failure of the Petitioner to attend the hearing scheduled for January 6, 2009. Accordingly, the Exceptions to the Initial Decision submitted by Petitioner are HEREBY REJECTED.

In his Initial Decision, ALJ Miller found that a potential hazard existed with regard to Petitioner's electric meter and that as a result, Respondent would be authorized to take appropriate action, including the discontinuance of service as provided for under N.J.A.C. 14:3-3A.1(a)(5).⁴ The record does not indicate that Respondent explicitly requested this relief. However, the record supports the conclusion that this condition became evident to Respondent when it conducted its meter inspection, which was scheduled as a result of Petitioner's claims that the damaged meter sockets were causing a flickering of power and a resulting overbilling of electric usage. The Board FINDS that ALJ Miller's order that Respondent may pursue the appropriate remedies with regard to the condition of the meter is proper because the condition was discovered as a result of an inspection related to Petitioner's original claims and the record supports the conclusion that the condition of the electrical socket poses a hazard.

⁴ N.J.A.C. 14:3-3A.1(a)(5) provides that a utility has the right to discontinue service if a (ix) the condition of the customer's installation presents a hazard to life or property or (x) if customer fails to repair any faulty facility of the customer.

Therefore, upon review of the record and the parties' filed Exceptions and Reply and based on the foregoing, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of Jules Tonkinson be HEREBY DISMISSED.

DATED: 4/3/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

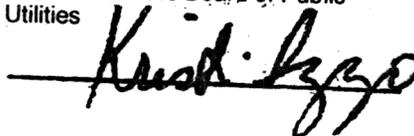

NICHOLAS ASSELTA
COMMISSIONER


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



JULES & LISA TONKINSON

v.

ATLANTIC CITY ELECTRIC COMPANY

**BPU DOCKET NO. EC08020099U
OAL DOCKET NO. PUC 6661-08
(On Remand From PUC 2632-08)**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
CASE MANAGEMENT
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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

INITIAL DECISION

OAL DKT. NO. PUC 6661-08

(On Remand from PUC 2632-08)

AGENCY DKT. NO. EC08020099U

JULES TONKINSON¹,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

No appearance on behalf of petitioner

Renee E. Suglia, Esq., for respondent

Record Closed: January 6, 2009

Decided: January 8, 2009

BEFORE W. TODD MILLER, ALJ:

¹ On numerous occasions, petitioner's wife, Lisa Tonkinson, asserted her right to be a participant in the present matter. She has claimed that her husband, Jules Tonkinson, is not competent to proceed. Attached to the transmittal under Docket No. PUC 6661-08 is a Power of Attorney with powers granted to Lisa Tonkinson from Jules Tonkinson. Therefore, while the petition only names Jules Tonkinson as the party in interest, Lisa Tonkinson is also a party in interest due to the Power of Attorney. Moreover, Jules and Lisa Tonkinson were at one time married and resided at the subject property at issue herein in Turnersville, New Jersey. Accordingly, for purposes of this Initial Decision, both Jules Tonkinson and Lisa Tonkinson shall be considered as petitioners.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On October 15, 2007, Jules Tonkinson filed a request for relief with the New Jersey Board of Public Utilities. The matter was referred over to the Office of Administrative Law (OAL) on April 15, 2008. The subject matter involved a billing dispute. Docket number PUC 2632-08 was assigned. The hearing was scheduled for August 6, 2008. At that time, neither Jules Tonkinson nor his wife, Lisa Leonard Tonkinson, appeared. The file was returned to the Board of Public Utilities as a failure to appear. By letter dated August 19, 2008, petitioner asked that his case be reinstated. The letter was filed with the Board of Public Utilities on or about August 25, 2008. The matter was remanded to the OAL. The file was received on September 29, 2008. The remand docket number is PUC 6661-08. The contested issue remained the same, to wit: a billing dispute. A plenary hearing was scheduled for January 6, 2009, at the OAL office in Atlantic City, New Jersey.

Notice of the hearing was sent to petitioner a variety of ways, including but not limited to OAL notice dated October 17, 2008, correspondence from respondent's counsel, Renee Suglia, Esquire dated December 5, 2008, and e-mail from Renee Suglia dated January 5, 2009. Except for the e-mail, all correspondence was sent to petitioner's last known address. This address is consistent with all other notices provided in the past since these cases were filed in 2007. The OAL notice was not returned undelivered.

On January 6, 2009, neither Lisa Tonkinson nor Jules Tonkinson had appeared as of 10:30 a.m. The record was opened and testimony was offered by Atlantic City Electric Company (ACE). While a failure to appear could have been issue, I concluded that it was appropriate to issue an Initial Decision given the history of this matter and, as discussed below, the presence of potential hazardous conditions involving the electric meter. The hearing proceeded ex parte and the record closed on January 6, 2009.

SUMMARY OF RELEVANT FACTS

Judith Rogozinski, Senior Analyst for ACE testified. Petitioner's own a home at 8 [B.] Road, Turnersville, New Jersey. In or around January 2002, an account was opened for service at the property. Billings from ACE commenced shortly thereafter. There were no disputed billings between the period of January 2002 and mid-2004.

Sometime in 2004, petitioners filed a complaint about their electric billing. Petitioners were on a budget program for payment purposes. Petitioners' budget had been exceeded. Petitioners advised ACE that they had opened their pool and installed a pool pump. This pump apparently increased the kilowatt hours (kW/h). A payment arrangement was reached between the parties. Petitioners agreed to pay all of their current electric charges, together with \$55 per month towards arrearages.

In or around November 2004, petitioners filed a verbal complaint with the Board of Public Utilities. They asserted that their meter was malfunctioning. The meter was tested by ACE and found to be operating at 100.41. This is an operating parameter that is considered normal. The inspection was witnessed by representatives from the Board of Public Utilities.

On July 22, 2005, petitioners filed a written complaint with the Board of Public Utilities. They complained about high billing. An inspection was again made of the meter and the meter was replaced. The inspection was witnessed or reviewed by the Board of Public Utilities. The meter tested at 100% on July 28, 2005.

In March 2006, petitioners complained to ACE that the meter was broken. They also complained that the lights in their house were flickering. ACE checked the meter and found it to be bad. They also told the petitioners that the casing or housing that contains the meter needed to be replaced. The casing that contains the meter is customer property. (See Tariff, § 9.4 entitled Meter Sockets and Current Transformer Cabinets wherein it states "It shall be the customer's responsibility to furnish, install and

maintain self-contained meter sockets and current transformer cabinets in accordance with Company specifications.”)

Petitioners’ service was disconnected for non-payment and reconnected numerous times during 2006.

In February 2007, petitioners filed a complaint in Superior Court seeking a resolution of their billing dispute or property damages against ACE. The case was dismissed for lack of jurisdiction. In February 2008, service was disconnected for non-payment. Petitioners filed a dispute with the Board of Public Utilities. The service was reactivated upon the filing of the dispute.

Currently there is \$5,565.24 due from petitioners. Petitioners are on a payment plan of \$200.00 per month. The payment plan does not cover the current amounts due during periods of high usage, nor does it adequately contribute to the arrearages of \$5,565.24. (See ACE-1 through ACE-3). The past-due balance continues to increase.

ACE concluded that the inclusion of petitioners’ pool pump in 2004 increased petitioners’ electric usage. kW/h for the period 2002 through 2005 are as follows:

	kW/h 15,566
2003	kW/h 17,258
	kW/h 24,730
	kW/h 25,855

ACE observed a significant jump in electric demand during the period 2004

Charles Thomas testified. Mr. Thomas has been with ACE for thirty-eight years. His current title is “trouble man.” His duties as trouble man are to address unique and special problems with residential and commercial properties. He has significant experience over thirty-eight years. He worked at a power plant and has worked as a

lineman. He receives periodic in-house training through ACE. He has served in the capacity as "trouble man" for nineteen years.

On July 21, 2008, Mr. Thomas visited petitioners' property. He was denied access to the meter. Petitioners were present. Lisa Tonkinson was very hostile towards the ACE representatives. The police were present at the property at the request of ACE. On July 24, 2008, ACE filed an emergent motion for an order providing it with access to petitioners' property. The petition was supported by reference to ACE's Tariff and the regulations. (See, e.g. N.J.A.C. 14:3-3.6(a) and § 5.4 of the Tariff, ACE-5). By Letter Order dated July 24, 2008, ACE's motion was granted. The Letter Order also indicated that this ALJ would attend the inspection.

The inspection took place as scheduled on July 25, 2008, at 1:00 p.m. Petitioners were not present. ACE videotaped the inspection. Mr. Thomas discussed his findings of the inspection. This included his observation that the casing surrounding the meter was leaking where the cable came through the electric meter's casing. The seal was dry rotted and cracked. Within the casing there are four terminals. Some of the terminals were corroded. Corrosion indicates that the terminals were heating up because of water infiltration. Corroded terminals and water infiltration could cause electrical problems, including flickering of the lights, which was confirmed in complaints by petitioners. Thomas concluded that this is a hazard. This could cause the terminals to heat up, service to fail, surges in the service and interruptions in service. When the terminals heat up, the metal gets soft. It could also cause property damage or potentially a fire. Thomas concluded that the appropriate remedy would be to replace the meter socket. The meter socket or housing is the property of the homeowner. It is not ACE's responsibility to make this repair. (See Tariff, § 9.4, C-1). Thomas concluded that the meter socket should immediately be replaced in order to avoid a potential hazard.

Petitioner was notified of ACE's findings in a letter dated July 28, 2008. (C-1).

CONCLUSIONS

In the present matter, it is clear that petitioners had sufficient notice of the hearing. Notice was provided by the OAL and said notice was not returned undelivered. Additionally ACE provided notice in writing and by e-mail. There was no request for a postponement by petitioners. The hearing proceeded through 11:00 a.m. on January 6, 2009. Petitioners did not appear prior to the close of the hearing. There were no other communications received from petitioners by that time. I therefore **CONCLUDE** that petitioners had sufficient notice to attend the hearing but failed to do so. At the time of the hearing, there were other reasons sufficient to warrant an adjournment of the matter.

I further **CONCLUDE** that this billing dispute is resolved due to petitioners' failure to appear. (See, N.J.A.C. 14:3-7.6(c).) When a billing dispute is resolved, a utility company may exercise its legal or equitable rights to pursue collection.

Finally, I **CONCLUDE** that there presently exists a potential hazard with the socket or casing involving petitioners' electric meter. I base this conclusion on the testimony of Charles Thomas, an experienced troubleshooter for ACE for over nineteen years. His inspection was concluded on July 25, 2008. Therein he observed water infiltration that caused corrosion on the terminals within the electrical socket. The socket is the homeowner's property as specifically set forth in the Tariff. I **CONCLUDE** therefore that ACE is authorized to take whatever action it deems appropriate in order to protect the interests of the property owner. This would include termination of service until the socket is adequately repaired. N.J.A.C. 14:3-3A.1(5) provides the basis of discontinuance of service as follows:

- ix. Where the condition of the customer's installation presents a hazard to life or property; or
- x. Failure of customer to repair any faulty facility of the customer.

This action is not intended to be punitive toward petitioners. The need for repairing the socket is exclusive from the outstanding balances due ACE.

ORDER

Based upon the foregoing, the action filed by petitioners is **DISMISSED**. It is further **ORDERED** that ACE may pursue such remedies as more specifically expressed above.

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, 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.

January 8, 2009

DATE

Date Received at Agency: 1-8-09

DATE

/sd

W. J. Miller

W. TODD MILLER, ALJ

J. Todd Miller

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

None

For Respondent:

Judith Rogozinsky

Charles Thomas

EXHIBITS

For Petitioner:

None

For Respondent:

- ACE-1, 2 and 3 - Account Analyses
- ACE-4 - Letter from Board of Public Utilities to Jules Tonkinson,
April 18, 2006
- ACE-5 - ACE's Emergency Motion, July 24, 2008

For the Court:

- C-1 - ACE Summary of July 25, 2008, Inspection, July 28, 2008