

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

CUSTOMER ASSISTANCE

JASON CONKRIGHT,
Petitioner,

V.

ATLANTIC CITY ELECTRIC COMPANY,
Respondent

ORDER ADOPTING INITIAL DECISION

BPU DOCKET NO. EC08121023U
OAL DOCKET NO. PUC2619-09

Jason Konkright, Minotolo, New Jersey, Pro se
Renee Suglia, Esq., Wilmington, Delaware, on behalf of Atlantic City Electric Company

BY THE BOARD:

By petition filed with the Board of Public Utilities (Board) on December 2, 2008, Jason Conkright (Petitioner) challenged an adjustment of a bill for electric services rendered by Atlantic City Electric Company (Respondent).

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law (OAL) for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge (ALJ) W. Todd Miller.

While this matter was pending at the OAL, the parties engaged in negotiations and entered into and executed a Stipulation of Settlement Agreement that was submitted to the ALJ. The parties stipulated to the following facts: 1) Petitioner was undercharged for electric service for a period of forty-one months; 2) the amount in dispute was adjusted from \$7,154.42 to \$4,687.53; 3) the billing period in dispute is from December 2004 to April 2008; 4) Petitioner, or his family, was the responsible party for the electric service during the period in dispute; and 5) the electric meter was not registering properly or was broken during the period.

Petitioner contends that he is not responsible for the Respondent's undercharges because the undercharge scenario is not addressed in the Respondent's tariff and that undercharges are inconsistent with the administrative code. Moreover, Petitioner argues that the Respondent was in a better position to detect the undercharges and it would be burdensome for Petitioner to pay forty-one months of arrears on top of current charges. Respondent asserts that the Petitioner received the value of electric service during the disputed period and that N.J.A.C. 14:3-

On November 19, 2009, ALJ Miller submitted his Initial Decision in this matter to the Board. A copy of the Initial Decision is attached hereto and made a part hereof. ALJ Miller found that the small amount of Petitioner's monthly bill over the period in dispute did not reflect actual usage and there were no proofs that electric service was terminated or interrupted during the disputed period. Accordingly, ALJ Miller found that Petitioner must pay for the electricity he received, in accordance with N.J.A.C. 14:3-4.6(d)3. ALJ Miller ordered Petitioner to pay Respondent \$4,687.53 at the rate of \$57.16 per month for eighty-two months or until the agreed repayment amount is paid.

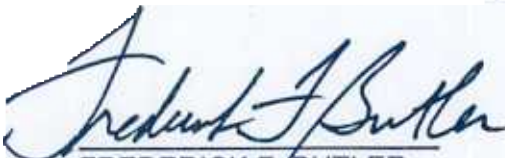
No Exceptions to the Initial Decision have been filed with the Board by either the Petitioner or the Respondent.

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. Therefore, based on the foregoing, the Board HEREBY ADOPTS the Initial Decision in its entirety including the ALJ's recommendation that Petitioner pay Respondent the stipulated amount of the repayment of \$4,678.53 at the rate of \$57.16 per month for eighty-two months or until the agreed repayment amount of \$4,687.53 has been repaid, whichever is earlier.

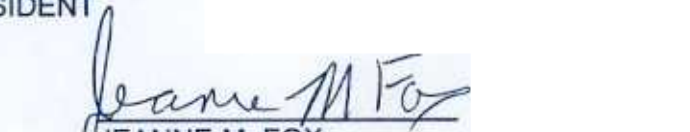
DATED: 1/21/10

BOARD OF PUBLIC UTILITIES
BY:


ELIZABETH RANDALL
ACTING PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

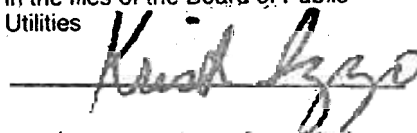

JEANNE M. FOX
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST:

CARMEN DIAZ
ACTING SECRETARY

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



¹ N.J.A.C. 14:3-4.6(d)2&3 apply to situations where a meter is found to be registering less than 100 percent of the service provided. This rule provides that a utility shall not adjust the charges retrospectively or require a customer to repay the amount undercharged except if (d)2 the meter failed to register at all; or (d)3 the circumstances are such that the customer should have reasonably known that the bill did not reflect the actual usage.

**JASON CONKRIGHT
V.
ATLANTIC CITY ELCTRIC COMPANY**

**BPU DOCKET NO. EC08121023U
OAL DOCKET NO. PUC2619-09**

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CMS

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 2619-09

AGENCY REF. NO. EC08121023U

2009 NOV 19 AM 10:16
J. B. P. PUBLIC UTILITIES
NEWARK, N.J.

JASON CONKRIGHT,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

Jason Conkright, petitioner, pro se

Renee Suglia, Esq., for respondent

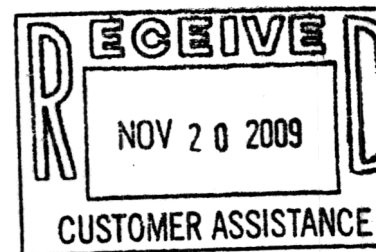
Record Closed: November 16, 2009

Decided: November 19, 2009

BEFORE W. TODD MILLER, ALJ:

STATEMENT OF THE CASE

Petitioner, Jason Conkright, appealed respondent's action adjusting his electric bill in the amount of \$7,152.42 as a result of a slow meter. For the reasons discussed below, the relief sought by petitioner is **DENIED** and the relief sought in respondent's counterclaim is **GRANTED**.



PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was transmitted to the OAL on April 8, 2009, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on November 16, 2009. The hearing proceeded on that date and the record closed.

CONSIDERATION OF FACTS AND TESTIMONY

The parties stipulated the following facts:

1. Petitioner was undercharged for electric service for a period of forty-one months.
2. The parties agreed to adjust the amount in dispute from \$7,154.42 to \$4,687.53.
3. December 2004 to April 2008 is the billing period at issue.
4. Petitioner, or his family, lived at the address in question during the disputed period. Petitioner, or his family, was the responsible party for the electric service during the period in dispute.
5. The electric meter was not registering properly or was broken during the disputed period.

ARGUMENTS OF THE PARTIES

Petitioner:

Petitioner's primary argument is set forth in his Memorandum to Atlantic City Electric dated August 4, 2008. Therein, petitioner argues:

Chapter 14 of the N.J.A.C., as you should know, refers to Utilities and regulates how they are run. Sub-Chapter 3 tells each utility regulated by the board, how it shall write its tariff and how that tariff applies to the company after it gains board approval. You informed me while we were on the phone that a tariff only tells the customer the rates that are charged for the service. N.J.A.C. 14:3-1.3b(2), however, states (the tariff required by this section shall:) "Clearly describe all services that the utility offers, and all terms and conditions regarding the services." We move down in the reading to find the next part of the code which applies in our situation. N.J.A.C. 14:3-1.3d states that "Each utility shall operate in accordance with its tariff at all times, unless specifically authorized in writing by the Board to do otherwise." We continue past the section on contract agreements since that does not apply to us and come to the next section which does N.J.A.C. 14:3-13h. This informs us that "Each utility shall make its Board-approved tariff available for public inspection in each utility office where applications for service may be made, and on its website, if the utility has a website." This is on ACE's website. Finally we come to the end of this section N.J.A.C. 14:3-1.3h¹, which reads "If there is any inconsistency between this chapter and a tariff, these rules shall govern, except if the tariff provides for more favorable treatment of customers than does this chapter, in which case the tariff shall govern."

Petitioner contends that he is not responsible for the company's undercharges because the undercharge scenario is not addressed in the company's Tariff. Petitioner further argues that billing undercharges is inconsistent with the administrative code. Finally, the company is in a better position to detect malfunctioning meters, forty-one months does not represent a reasonable period to detect this type of undercharge, and paying forty-one months of electric arrears, on top of paying current charges, is burdensome.

Electric Company:

¹ This is a typographical error and should be N.J.A.C. 14:3-1.3i. Petitioner verbally corrected this error on the record at the hearing.

The company asserts that petitioner received the value of electric service during the disputed period. And the regulations embodied at N.J.A.C. 14:3-4.6(d)2,3 apply. Petitioner knew, or should have known, his electric bill was significantly below a normal bill. (JT-1). For example, petitioner's normal bill was about \$100-\$200 during the periods before the meter malfunctioned. (JT-1). During the disputed period, his bill was \$2-\$4 dollars. The difference is obvious. The regulations clearly address this type of undercharge situation resulting from a malfunctioning meter, even though the Tariff does not. The regulations are controlling.

CONCLUSIONS OF LAW

The Atlantic Electric Tariff (Tariff) for Electric Service, Section II, 5.2, which states:

Maintenance of Company's Equipment:

The Company will provide and maintain in proper operative condition the necessary line or service connections, transformers (when same are required by conditions of contract between the parties thereto), meters and other apparatus which may be required for the proper measurement of and protection to its service. All such apparatus shall be and remain the property of the company.

Section 6.3 of the Tariff, states:

Adjustment of Bill:

Whenever a meter is found to be registering "fast" in excess of the allowable limits established by the Board of Public Utilities, an adjustment shall be made corresponding to the percentage error as found in the meter covering the entire period during which the meter registered inaccurately, provided such period can be determined. Where such period cannot be determined, a correction shall be applied to $\frac{1}{2}$ of the total amount of billing affected since the previous test. No adjustment shall be made for a period greater than the time during which the customer has received service through the meter in question.

Also pertinent is N.J.A.C. 14:3-4.6., which states in part:

(a) ...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.

*

(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:

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.

[Emphasis added]

Black's Law Dictionary, Ninth Edition, 2009, defines unjust enrichment and Quantum meruit as follows:

Unjust Enrichment is the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected; (2) a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense; (3) the area of law dealing with unjustifiable benefits of this kind.

Quantum meruit is defined as (1) the reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship; (2) a claim or right of action for the reasonable value of services rendered; (3) at common law, a count in an assumpsit action to recover payment for services rendered to another person.

•Quantum meruit is still used today as an equitable remedy to provide restitution for unjust enrichment. It is often pleaded as an alternative claim in a breach-of-contract case so that plaintiff can recover even if the contract is unenforceable.

In this case, the uncontroverted proofs confirm that the meter failed to register accurately and that petitioner was significantly undercharged. I **CONCLUDE** that the small amount of petitioner's monthly bill over the forty one month period in question should reasonably have caused petitioner to know that the bill did not reflect actual usage. There were no proofs that electric service was terminated or interrupted during the disputed period. Consequently, petitioner received electricity which must be paid for in accordance with N.J.A.C. 14:3-4.6(d)3. See also, Phillips v. South Jersey Gas Co., OAL DKT. No. PUC 4596-07 (April 22, 2008); aff'd Final Decision (July 16, 2008); Stein v Atlantic City Electric Company, OAL DKT. No. PUC 6348-08 (March 24, 2009).

While the Tariff does not address company undercharges, the regulations do and are controlling. Petitioners main argument is that "if there is any inconsistency between [the administrative code²] and a tariff, these rules shall govern, except if the tariff provides for more favorable treatment of customers than does this chapter, in which case the tariff shall govern". I **CONCLUDE** there is no inconsistency. The Tariff does not offer petitioner more favorable treatment than the administrative code resulting in an inconsistency. Rather the Tariff is silent on the point so N.J.A.C. 14:3-1.3h does not apply.

I am mindful of the legal principles of unjust enrichment and quantum meruit. Respondent asserted these in its counterclaim. Here it is undeniable that petitioner received electric service during the disputed period. Therefore the service must be paid for in accordance with these equitable principles, despite the legal arguments raised by petitioner. so **CONCLUDE**.

Finally petitioner is correct that forty-one months is a long time for the billing error to be detected and adjusted. Petitioner was on active duty in Iraq for some portion of the disputed period. Moreover, he is in the process of a divorce. The combination of these factors makes the repayment of forty-one months of undercharged electric service burdensome.

The amount to be repaid was stipulated. But the repayment period was left open. Corrective payments normally run for the same period that the error was present, which was forty-one months in this instance. Repayment of \$4,687.53 over forty-one months equals \$114.33 per month. Adding current charges to that amount could result in a monthly bill as high as \$413.59. (\$114.33 plus \$299.26³). In order to reduce the burden, I am enlarging the repayment period to eighty-two months.

ORDER

For the above-mentioned reasons, the relief sought by petitioner is **DENIED**. Respondent's counterclaim is **GRANTED**. Petitioner is **ORDERED** to pay respondent \$4,687.53 at the rate of \$57.16⁴ per month for eighty-two months or until the agreed repayment amount of \$4,687.53 has been repaid.

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.

² Citing N.J.A.C. 14:3-1.3h

³ Bill for August 2009, (JT-1).

⁴ \$4687.53 divided by 82 months = \$57.16.

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.

November 19, 2009

DATE

W. J. Miller

W. TODD MILLER, ALJ

Date Received at Agency: *11-19-09*

Date Mailed to Parties:

Floyd R. Lang

/sd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

None

For Respondent:

None

EXHIBITS

For Petitioner:

None

For Respondent:

None

Joint Exhibits:

Atlantic Electric Account Statement, 2003 through 2009
(Portions of) Atlantic Electric Tariff for Electric Service, Section II