



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

CUSTOMER ASSISTANCE

ERVIN A. DEAN, JR,)	
)	
Petitioner,)	ORDER ADOPTING
)	INITIAL DECISION IN PART AND
v.)	REMANDING IN PART
)	
ATLANTIC CITY ELECTRIC COMPANY,)	
)	BPU DOCKET NO. EC07030188U
Respondent.)	OAL DOCKET NO. PUC 4599-07

(SERVICE LIST ATTACHED)

BY THE BOARD:

On March 15, 2007, Ervin Dean (Petitioner) filed a petition with the Board of Public Utilities (Board) disputing a bill from Atlantic City Electric Company (Respondent). Petitioner alleged that Respondent incorrectly transferred charges from a prior address of Ms. Selena Evans (Ms. Evans) to his account. Respondent filed an Answer that generally denied Petitioner's allegations and asserted five affirmative defenses and no counterclaims. Subsequently, the Board transmitted this matter to the Office of Administrative Law (OAL) on May 23, 2007 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) Bruce M. Gorman. During the pendency of this matter at the OAL, the parties engaged in negotiations, but were unable to reach a Settlement. At the hearing on February 7, 2008, Respondent asserted counterclaims to outstanding balances on Petitioner's accounts. In response Petitioner testified that he paid his bills, enrolled in a winter protection budget billing, and could not discern what he owed due to Respondent's billing practices. ALJ Gorman issued an Initial Decision that was received by the Board on February 20, 2008. Petitioner filed written exceptions to the Initial Decision on March 7, 2008. By letter filed March 11, 2008, Respondent also filed written exceptions, which Respondent then sought to supplement by letter dated April 9, 2008. Pursuant to N.J.A.C. 1:1-18.8, the Board requested extensions from the OAL to review the Initial Decision as well as the written exceptions. The Board has completed review and now accepts the Initial Decision in part and remands in part.

INITIAL DECISION

ALJ Gorman commences his Initial Decision by stating that "Petitioner asserted that [R]espondent . . . charged his account for electricity provided to [Ms. Evans]." (Initial Decision 2, 5.) At the hearing, ALJ Gorman notes that Petitioner argued that Respondent's bills are "so confusing that [Petitioner] cannot determine what he owes." Id. at 2. Having reviewed the documents submitted and testimony of the parties, ALJ Gorman found that Respondent's bills to Petitioner were confusing due to three factors: (1) the complexity of the Respondent's billing process; (2) the questionable assumptions made by Respondent; and (3) the frequent relocation of Petitioner. Ibid. Thus, ALJ Gorman's Initial Decision makes an effort to track the various addresses where electric service was allegedly provided to Petitioner and Ms. Evans as well as the account balances remaining at each address.

ALJ Gorman begins his factual discussion by noting that Ms. Evans lived at 91 Villas Drive in New Castle, Delaware until 2001, when she vacated the premises and left an unpaid electric bill in the amount of \$723.21. (Initial Decision 2, citing R-3.) Having relocated to New Jersey, Ms. Evans took up residence at 300 Atlantic Avenue, Atlantic City sometime in late 2002. Ibid. On December 3, 2002, Ms. Evans opened a new account with Respondent for the provision of electric service to 300 Atlantic Avenue. Ibid. With reference to R-2, ALJ Gorman states that Respondent "ultimately determined that [Ms.] Evans was the same person who had defaulted in New Castle" and, on January 3, 2003, Respondent transferred the prior balance of \$723.21 to the 300 Atlantic Avenue account. Ibid.

"At an unknown time, probably in 2004," ALJ Gorman explains that Respondent added Petitioner's name to the bill for the 300 Atlantic Avenue account. (Initial Decision 3.) Ms. Judith Rogozinski, Senior Analyst in Respondent's Regulatory and Executive Customer Relations Department, testified for the Respondent that she believed Petitioner's name was added to the 300 Atlantic Avenue account, because Petitioner called Respondent and agreed to be responsible for the bills. Ibid. Ms. Rogozinski was not a party to the alleged telephone call and did not know the date of the call. Ibid. Instead, her testimony was based on her review of notes in the file, which she had not written. Ibid. While Petitioner admitted to having telephoned Respondent, he denied agreeing to assume responsibility for the 300 Atlantic Avenue account of Ms. Evans. Ibid. Rather, Petitioner testified that he received a bill containing three names: Ms. Evans, Danielle Dean (his wife), and his own. Ibid. Petitioner further testified that, when he called Respondent, he stated that he would not accept responsibility for the account of Ms. Evans. Ibid. ALJ Gorman notes that Respondent "offered no contrary explanation as to why [P]etitioner called their offices." Ibid. In addition, the only bill from 2004 offered into evidence was the April 2004 "FINAL BILL" for 300 Atlantic Avenue, which lists Petitioner as well as Ms. Evans. Id. (citing R-1). While Ms. Rogozinski confirmed that R-1 was the last bill for the 300 Atlantic Avenue account, ALJ Gorman notes that Respondent's account summary of 300 Atlantic Avenue, admitted into evidence as R-2, only identifies Ms. Evans. (Initial Decision 4.) ALJ Gorman stated that Respondent offered no credible explanation for why Petitioner would voluntarily assume responsibility for the bill of Ms. Evans. Ibid. Furthermore, Respondent never established the date Petitioner allegedly assumed responsibility for the bill or the balance as of that date. Ibid. In light of the foregoing, ALJ Gorman found that "[P]etitioner's testimony that he never agreed to assume responsibility for [Ms.] Evans' bill at 300 Atlantic Avenue [was] credible and believable." Ibid.

Following the April 2004 termination of the 300 Atlantic Avenue account, Respondent has no records for Ms. Evans or Petitioner until June 2006. (Initial Decision 4.) Ms. Evans terminated the 300 Atlantic Avenue account with an outstanding balance of \$941.01, which included the

\$723.21 Ms. Evans owed from New Castle, Delaware as well as an arrearage of \$217.80 from 300 Atlantic Avenue. Ibid. In June 2006, Petitioner took up residence at 655 Absecon Boulevard, Atlantic City and, according to R-4,¹ opened an account with Respondent. Ibid. On November 21, 2006, Respondent transferred the \$941.01 balance from the 300 Atlantic Avenue account of Ms. Evans to Petitioner's 655 Absecon Boulevard account. Id. (citing R-4).

Petitioner subsequently filed his petition in the instant matter with the Board. (Initial Decision 4.) In the petition, Petitioner denies responsibility for the transferred charges for the account balances of Ms. Evans from New Castle and 300 Atlantic Avenue. (Pet. 1.) In his Initial Decision, ALJ Gorman notes that Respondent "acknowledged it could not charge [Petitioner] for Evans' bill from New Castle by crediting his [655 Absecon Boulevard] account with the amount of \$723.21" on April 19, 2007. (Initial Decision 4, citing R-4.) Therefore, ALJ Gorman found that "[Respondent] has not charged Petitioner for the New Castle bill." Id. at 5.

In June 2007, Petitioner left 655 Absecon Boulevard with an outstanding balance of \$829.08, which included the \$217.80 arrearage from the 300 Atlantic Avenue account of Ms. Evans. (Initial Decision 5.) That same month, Petitioner relocated to 165 39th Street, Brigantine and Respondent transferred the combined balance of \$829.08 from the 655 Absecon Boulevard and 300 Atlantic Avenue accounts to his new account. Id. (citing R-5). On September 5, 2007, Respondent credited Petitioner's account for the \$217.80 balance from the 300 Atlantic Avenue account of Ms. Evans. Ibid. ALJ Gorman explains that, following the credit to Petitioner's account in September 2007, the remaining balance was attributable to Petitioner's electric service accounts at 655 Absecon Boulevard and 165 39th Street. Id. at 5, 7.

Notwithstanding the credit to Petitioner's account, Respondent sought to recover the \$217.80. (Initial Decision 6.) At the hearing, Respondent offered into evidence a lease dated April 23, 2007, which shows that Petitioner and Ms. Evans rented an apartment together. Ibid. ALJ Gorman opined that the lease "in no way constitutes evidence that [P]etitioner resided at 300 [Atlantic] Avenue in 2004, or that he ever agreed to be responsible for the electric bill for that premises."² Ibid. In addition, ALJ Gorman found that Ms. Rogozinski's recollection, detailed above, was not supported by the legally competent evidence required by N.J.A.C. 1:1-15.5. Id. at 7. Therefore, ALJ Gorman denied Respondent's application for the \$217.80 charged to 300 Atlantic Avenue. Ibid.

At the hearing, Respondent sought to recover the outstanding balances at 655 Absecon Boulevard, 165 39th Street, and other amounts detailed below. In his petition to the Board, Petitioner denies responsibility for the transferred charges for the account balances of Ms. Evans from New Castle and 300 Atlantic Avenue. (Pet. 1.) While Respondent's Answer issues a general denial of Petitioner's claims, Respondent's claims to outstanding balances were not detailed in the Answer. (Answer 1-2.) Rather, Respondent's claims arose from the evidence admitted at the hearing. Therefore, Respondent's requests for recovery of these outstanding balances will be referred to as counterclaims and Petitioner's responses on the record will be referred to as his answers to those counterclaims.

¹ ALJ Gorman notes that Respondent submitted R-4 at the hearing with typographical errors per the testimony of Ms. Rogozinski. While the second page of the exhibit lists the first six entries as the year 2007, the witness clarified that those entries actually occurred in the year 2006. (Hr'g Tr. 69, Feb. 7, 2007.) After reviewing the entire billing summary, ALJ Gorman concluded that the dates were typographical errors and should reflect the year 2006. (Initial Decision 4 n.1.)

² While the Initial Decision repeatedly references "300 Absecon Avenue," it is evident from the context that ALJ Gorman intended to say "300 Atlantic Avenue."

In his Initial Decision, ALJ Gorman attempts to clarify the remaining balance attributable to Petitioner's electric service accounts at 655 Absecon Boulevard and 165 39th Street. (Initial Decision 5-6.) When he left 165 39th Street in September 2007, ALJ Gorman opines that Petitioner owed \$914.20.³ (Initial Decision 5, citing R-5.) ALJ Gorman states that "[Respondent] agreed that [P]etitioner moved" from 165 39th Street to Newtown Square. Id. at 8. ALJ Gorman calculates that, "for reasons unexplained," Respondent added \$305.47 against Petitioner's account after his departure. Id. at 5. ALJ Gorman also states that, after his relocation, Petitioner made two payments amounting to \$189.00, which "were applied against his arrearage at [165 39th Street]." Ibid. Respondent contends that Petitioner owes \$1030.98, which includes his outstanding balance from 655 Absecon Boulevard as well as the unpaid charges from 165 39th Street before and after Petitioner vacated. Id. at 6. However, ALJ Gorman notes that Respondent offered no evidence as to why it continued to bill Petitioner at 165 39th Street. Id. at 8. In the absence of such explanation, ALJ Gorman concludes that he cannot award Respondent the charges that accrued after Petitioner's departure. Ibid. Therefore, ALJ Gorman's Initial Decision awards Respondent "the balance of \$914.51 due as of September 21, 2007, its last billing date in September, minus the payments of \$189.00 made by petitioner afterward against the arrearage," which equates to \$725.51. Ibid.

ALJ Gorman's Initial Decision then discusses Petitioner's alleged relocation, in September 2007, to Newtown Square Condominium B3-9, Pleasantville ("Newtown Square"), where Petitioner opened a new account. (Initial Decision 5, citing R-7.) While Respondent did not transfer the remaining balance attributable to Petitioner's electric service accounts at 655 Absecon Boulevard and 165 39th Street to the Newtown Square account, Respondent claims that the Newtown Square account has an outstanding balance of \$441.36. Id. at 6 (citing R-7.) ALJ Gorman states that Petitioner offered no defense to Respondent's claim. Id. at 8. Therefore, ALJ Gorman concluded that Respondent is entitled to receive \$441.36, from Petitioner for the Newtown Square account, and an overall total of \$1,166.87. Ibid.

EXCEPTIONS TO THE INITIAL DECISION

By letter dated March 4, 2008 and filed March 7, 2008, Petitioner took exception to ALJ Gorman's conclusion that he owed \$1166.87 and Petitioner requested an appeal.⁴ (Petr. Exceptions 1.) Petitioner disputes the various charges reflected on his 655 Absecon Boulevard and 165 39th Street accounts, the subject of Respondent's counterclaims at the hearing. (Petr. Exceptions 1-2.) In addition, Petitioner alleges that Respondent's billing and ALJ Gorman's decision do not consider Petitioner's payments or his enrollment in the winter protection budget billing program. Ibid. As a result, Petitioner proposes the conclusions that (1) he owed \$270.17 when he departed 655 Absecon Boulevard rather than the \$829.08 detailed in the Initial Decision and (2) Respondent's bills to 165 39th Street are incorrect "because [Respondent] did not transfer the correct balance [from 655 Absecon Boulevard] to the [165 39th Street] account and [did] not show payments made to the account." (Petr. Exceptions 2.)

³ The Board takes note that ALJ Gorman states that Petitioner owed \$914.20 on page 5 of the Initial Decision, but awards Respondent \$914.51 on page 8 of the Initial Decision.

⁴ The Board understands Petitioner's request for an appeal to be a request for the agency head to review the Initial Decision per the Uniform Administrative Procedure Rules, specifically N.J.A.C. 1:1-18.6, which states that "the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision."

By letter dated March 10, 2008 and filed March 11, 2008, Respondent takes exception to ALJ Gorman's finding that Petitioner moved from 165 39th Street to Newtown Square in September 2007 and his conclusions derived therefrom. (Resp't Exceptions 1, Mar. 10, 2008.) With reference to the trial transcript, Respondent contends that Petitioner testified that, despite opening an account at Newtown Square, he continued to reside at 165 39th Street. Ibid. Respondent proposes a factual finding that Petitioner maintains two active accounts with Respondent. (Resp't Exceptions 2.) Ultimately, Respondent proposes the conclusion that Respondent is due \$1,472.34, which includes \$1,030.98 from the 165 39th Street account and \$441.36 from the Newtown Square account. Ibid.

In addition, by letter dated April 9, 2008, Respondent supplemented its exceptions to the Initial Decision. (Resp't Exceptions 1, Apr. 9, 2008.) Respondent reported that Petitioner placed a telephone call to Respondent on March 27, 2008 requesting a disconnection of service at 165 39th Street. Ibid. Respondent submitted this information as further support for its contention that Petitioner did not move to Newtown Square in September 2007. Ibid.

ANALYSIS

Having reviewed the record, Staff concurs with ALJ Gorman's analysis regarding the transferred balances from the New Castle and 300 Atlantic Avenue accounts of Ms. Evans. These transferred balances were the subject of the petition filed with the Board. (Pet. 1.) In his Initial Decision, ALJ Gorman notes that Respondent "acknowledged it could not charge [Petitioner] for Evans' bill from New Castle." (Initial Decision 4, citing R-4.) ALJ Gorman also concluded that Respondent provided no credible evidence that Petitioner agreed to assume responsibility for the bills of Ms. Evans, pursuant to the Residuum Rule. N.J.A.C. 1:1-15.5. The witness' recollection of a note she did not write regarding a telephone call in which she did not participate does not constitute competent evidence. (Initial Decision 7.) ALJ Gorman states that Respondent credited Petitioner's account the total of \$941.01, which was transferred from the New Castle and 300 Atlantic Avenue accounts. (Initial Decision 4, citing R-4.) ALJ Gorman also found that "[P]etitioner's testimony that he never agreed to assume responsibility for [Ms.] Evans' bill at 300 Atlantic Avenue [was] credible and believable." (Initial Decision 3.) In light of the foregoing, ALJ Gorman denied Respondent's claim for the payment of \$217.80 from the 300 Atlantic Avenue account. The Board now finds that Petitioner is not responsible for the charges related to the New Castle and 300 Atlantic Avenue accounts of Ms. Evans.

At the hearing, Respondent raised the issue of outstanding balances at 655 Absecon Boulevard, 165 39th Street, and Newtown Square. Despite finding that Respondent's bills to Petitioner are confusing, ALJ Gorman made a genuine effort to track Petitioner's accounts before determining that Petitioner owed Respondent \$1,166.87. In his exceptions, however, Petitioner highlighted the arguments he made during the hearing, which were incompletely considered by ALJ Gorman in reaching that conclusion. (Petr. Exceptions 1-2.) In particular, ALJ Gorman's Initial Decision makes no reference to Petitioner's claims that he made payments on several accounts and that he was enrolled in a winter protection budget billing program. (Hr'g Tr. 47-48, 63-64, Feb. 7, 2008.) Respondent also made reference to Petitioner's position regarding these addresses. (Hr'g Tr. 23, Feb. 7, 2008.) The Initial Decision is devoid of any discussion or reference to Petitioner's payment claims. Therefore, it is unclear whether ALJ Gorman failed to consider this evidence or whether ALJ Gorman found that Respondent had appropriately credited Petitioner's accounts.

Furthermore, Respondent's exceptions indicate that ALJ Gorman did not consider the testimony of Ms. Rogozinski regarding Petitioner's alleged relocation from 165 39th Street to Newtown Square in September 2007. (Resp't Exceptions 1, Mar. 10, 2008.) Instead, ALJ Gorman concluded that Respondent "offered no evidence as to why it continued to bill" Petitioner's 165 39th Street account after September 2007. (Initial Decision 8.) In light of the exceptions filed and a review of the record, Respondent's counterclaims regarding the outstanding balances at 655 Absecon Boulevard, 165 39th Street, and Newtown Square should be remanded, because Petitioner's responses to Respondent's counterclaims and the testimony of Respondent's witness were incompletely considered. On remand, the Board recommends that Respondent submit the actual billing statements in order to avoid the confusion caused by the billing summaries presented at the hearing.

While ALJ Gorman found that the confusing nature of Respondent's billing is the result of three factors, the Board also finds Respondent's billing confusing due to the limited evidence admitted at the hearing and the errors contained therein. ALJ Gorman finds that, because Petitioner was not responsible for the bills of Ms. Evans, Respondent appropriately credited his account. The Board agrees with ALJ Gorman's conclusion that Petitioner is not responsible for the outstanding balances of Ms. Evans. However, the Board cannot find that Respondent appropriately credited Petitioner based on the evidence submitted. Therefore, the Board suggests that Respondent provide actual billing records as evidence at the hearing on remand rather than the billing summaries.

Both Petitioner and Respondent submitted evidence not presented at the hearing as part of their exceptions and advanced new arguments in support of their positions. (Petr. Exceptions 1-2; Resp't Exceptions 1, Apr. 9, 2008.) Respondent now argues that Petitioner's alleged telephone call to Respondent on March 27, 2008 requesting a disconnection of service at 165 39th Street, further supports Respondent's claim that Petitioner received electric service at 165 39th Street and Newtown Square after September 2007. (Resp't Exceptions 1, Apr. 9, 2008.) Petitioner submitted numerous statements, which were not admitted into evidence at the hearing, with his exceptions in order to support his argument that Respondent incorrectly billed his account. (Petr. Exceptions 1-2.) The Uniform Administrative Procedure Rules state that "[e]vidence not presented at the hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions." N.J.A.C. 1:1-18.4. Nevertheless, the "agency head may enter an order remanding a contested case to the [OAL] for further action on issues or arguments not previously raised or incompletely considered." N.J.A.C. 1:1-18.7. In a situation such as this, where both parties assert new evidence and new arguments in their exceptions, remand is the appropriate route to ensure a fair disposition of the case. Therefore, remanding Respondent's counterclaims regarding the outstanding balances at 655 Absecon Boulevard, 165 39th Street, and Newtown Square will afford the parties the opportunity to more fully develop the record and respond to the allegations presented.

After review and consideration of the record, the Board **HEREBY FINDS** that Petitioner never agreed to assume responsibility for the New Castle and 300 Atlantic Avenue bills of Ms. Evans. Therefore, the Board **HEREBY ADOPTS** ALJ Gorman's decision to deny Respondent's claim for the payment of \$217.80 from the 300 Atlantic Avenue account. However, based on the limited evidence presented by Respondent and for the reasons noted above, the Board **HEREBY REMANDS** the question of whether Respondent fully credited Petitioner's accounts for the New Castle and 300 Atlantic Avenue bills of Ms. Evans.

Upon review and consideration of the record, Petitioner's exceptions, and Respondent's exceptions, the Board **HEREBY FINDS** that both parties submitted new evidence in their

exceptions and asserted arguments not previously raised. The Board **HEREBY FINDS** that the Petitioner's responses to Respondent's counterclaims to outstanding balances at 655 Absecon Boulevard, 165 39th Street, and Newtown Square were incompletely considered by the ALJ. In light of Respondent's exceptions, the Board **HEREBY FINDS** that the testimony of Respondent's witness was also incompletely considered by the ALJ. Therefore, the Board **HEREBY REMANDS** the counterclaims to outstanding balances at 655 Absecon Boulevard, 165 39th Street, and Newtown Square in order to more fully develop the record. On remand, the Board suggests that Respondent submit the actual billing statements for the disputed accounts rather than the billing summaries.

DATED:

6/16/08

BOARD OF PUBLIC UTILITIES

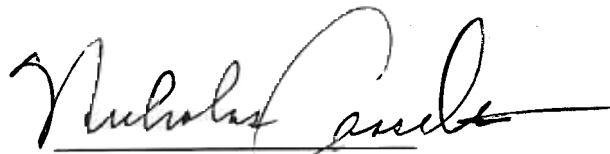
BY:


JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

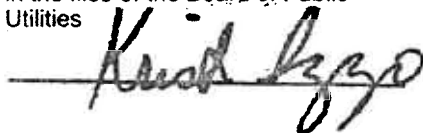

CHRISTINE V. BATOR
COMMISSIONER


NICHOLAS ASSELTA
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



**ERVIN A. DEAN, JR.
v.
ATLANTIC CITY ELECTRIC COMPANY
BPU DOCKET NO. EC07030188U
OAL DOCKET NO. PUC 4599-07**

SERVICE LIST

Ervin A. Dean, Jr.
727 Black Horse Pike
Bldg. 3 – Unit 9
Pleasantville, New Jersey 08232

Renee E. Suglia, Esq.
Pepco Holdings Inc.
800 North King Street
Wilmington, DE 19801

Eric Hartsfield, Director
Julie Ford-Williams
Division of Customer Assistance
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Cynthia L. Miller, DAG
Division of Law
124 Halsey Street – P.O. Box 45029
Newark, New Jersey 07102



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
MAIL ROOM
08 MAR 14 AM 10:50
BOARD OF PUBLIC UTILITIES
NEWARK, NJ

INITIAL DECISION

OAL DKT. NO. PUC 4599-07

AGENCY DKT. NO. EC07030188U

ERVIN A. DEAN, JR.,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

Ervin A. Dean, Jr., petitioner, pro se

Renee E. Suglia, Esq., for respondent

Record Closed: February 7, 2008

Decided: February 20, 2008

BEFORE BRUCE M. GORMAN. ALJ:

STATEMENT OF THE CASE

Respondent Atlantic City Electric Company ("ACE") attempted to collect the sum of \$1690.14 from petitioner for utility services allegedly provided to him. Petitioner appealed respondent's determination that he is responsible for the bill on the grounds that the charges were accrued by another person.

PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was transmitted to the OAL on June 21, 2007, 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 scheduled for a heard on February 7, 2008, and the record closed.

FACTUAL DISCUSSION

Petitioner brought this action to contest respondent's contention that he owes \$1690.14 in utility charges. Petitioner asserted that respondent ACE charged his account for electricity provided to another person at a location whereat he did not reside. He further argued that ACE's bills are so confusing that he cannot determine what he owes.

After reviewing the documents and hearing the testimony, I am satisfied that the billing is confusing. I **FIND** that the confusing nature of the billing is the result of three factors: the complexity of the billing process, questionable assumptions made by ACE, and petitioner's nomadic way of life. The facts are as follows.

The story begins in the state of Delaware. A young woman named Selena Evans lived at 91 Villas Drive #9 in New Castle. In 2001, Evans departed that premises, leaving an unpaid electric bill in the amount of \$723.21. A summary of those charges dated February 5, 2008, was offered into evidence as R-3.

Evans migrated to New Jersey. Sometime in late 2002 she took up residence at 300 Atlantic Avenue, #1008, in Atlantic City. On December 3, 2002, she opened a new account with ACE for the receipt of services at that address, as evidenced by the account summary dated February 5, 2008, introduced into evidence as R-2. According to R-2, ACE ultimately determined that Evans was the same person who had defaulted in New Castle. Accordingly, on January 3, 2003, they transferred the prior balance of \$723.21 to her account for 300 Atlantic Avenue (R-2).

At a point in time uncertain, petitioner and Evans became friends. While the exact nature of their past and present relationship was the subject of dispute between the parties, I am satisfied that the term "friends" is the minimum accurate description of their relationship.

At an unknown time thereafter, probably in 2004, ACE added petitioner's name to the bill for 300 Atlantic Avenue. How this came about is the subject of dispute. Judith Rogozinski, Senior Analyst for Electric's Regulatory and Executive Customer Relations Department, testified that she believed the addition of petitioner's name to the account was the result of a telephone call between himself and ACE. She reviewed certain notes in the file, and concluded that petitioner had agreed to be responsible for Evans' bill. Rogozinski herself did not participate in this telephone call. She did not identify the name of the person who did so. She did not know the date of the telephone call. Nor did she produce the notes from the file that she said she reviewed. In short, she had no firsthand information about the telephone call. Her information was at best based upon double hearsay.

Petitioner agreed that he had telephoned ACE, but emphatically denied that he agreed to accept responsibility for Evans' bill. He testified that he received a bill containing three names: Evans, his then wife Danielle Dean's, and his own. He stated that ACE had commingled his and his wife's bill with Evans'. He told whomever he talked to at ACE that he would be responsible for the bill belonging to him and his wife, but he would not accept responsibility for Evans' bill.

ACE offered no contrary explanation as to why petitioner called their offices. Neither party produced any of the bills from 2004, with the exception of the bill for April. That bill (R-1) contains the names "Irvin Dean" and "Selena Evans." It also contains the notation "FINAL BILL". Rogozinski confirmed that R-1 was the last bill for 300 Atlantic Avenue.

It is instructive that the account summary for 300 Atlantic Avenue generated by ACE on February 5, 2008, two days prior to trial, and introduced into evidence as R-2 contains only the name Selena Evans. Petitioner's name is absent from this document.

I **FIND** petitioner's testimony that he never agreed to assume responsibility for Evans' bill at 300 Atlantic Avenue to be credible and believable. First, ACE offered no credible explanation for why he would voluntarily assume responsibility for someone else's bill. Next, ACE never established what date this purported assumption occurred, or what Evans' balance on that date was. Further, ACE offered nothing to show that petitioner had any intent to assume responsibility for Evans' Delaware bill, an arrearage that had been folded into her bill for 300 Atlantic Avenue in January 2003.

Evans account for 300 Atlantic Avenue was terminated in April 2004 with an outstanding balance of \$941.01. That figure included the \$723.21 she owed from New Castle, plus an additional arrearage of \$217.80.

For over two years, ACE's records do not reflect any activity by either petitioner or Evans. In June 2006, petitioner took up residence at 655 Absecon Boulevard #1111 in Atlantic City. According to ACE's summary of its billing for that address, Exhibit R-4, petitioner opened an account with Electric on June 12, 2006¹.

According to R-4, on November 21, 2006 ACE transferred to petitioner's account for 655 Absecon Boulevard Evans' prior balance from 300 Atlantic Avenue of \$941.01. Petitioner objected to this action and filed the petition herein with the Board of Public Utilities on March 14, 2007. Thereafter, on April 19, 2007 ACE acknowledged it could not charge him for Evans' bill from New Castle by crediting his account with the amount of \$723.21. See R-4. However, ACE continued to charge petitioner for the remaining arrearage from 300 Atlantic Avenue of \$217.80.

¹ R-4 shows the first billing date to have occurred on June 12, 2007. The first six entries all reflect the year 2007. Beginning with the seventh entry – 9/7/06 – the entries reflect the year 2006 and continue chronologically into 2007. Rogozinski testified that the first six entries contained typographical errors. All six entries occurred in 2006. After reviewing the entire billing summary, I am satisfied that the first six dates should reflect the year 2006.

At trial, petitioner expressed confusion over exactly what he had been charged for. He stated that his primary complaint was that he was being charged for Evans' bill. He objected to paying for Evans' utilities.

I FIND that ACE has not charged petitioner for the New Castle bill. By virtue of the credit issued to petitioner on April 19, 2007, ACE rectified the situation regarding the New Castle arrearage. However, ACE continued to bill petitioner for the remaining \$217.80 arrearage from 300 Atlantic Avenue.

Petitioner departed 655 Absecon Boulevard in June of 2007. He left owing ACE a balance of \$829.08. That amount continued to include the \$217.80 from 300 Atlantic Avenue.

Petitioner then moved to 165 39th Street in Brigantine, New Jersey. As reflected in its billing summary for that location, R-5, ACE transferred to that account the balance from 655 Absecon Boulevard. However, on September 5, 2007, ACE provided petitioner with a credit for the disputed \$217.80. At that juncture, the entire balance owed by petitioner was for his tenancy at either 655 Absecon Boulevard or 165 39th Street.

Petitioner moved again in September 2007. Both parties agreed that at that time he moved to Newtown Square Condominium B3-9 in Pleasantville, New Jersey. Petitioner opened a new account for that address, as reflected in ACE's billing statement, R-7.

At the time of his departure from 165 39th Street, petitioner owed \$914.20 (see R-5). Notwithstanding his new tenancy, and for reasons unexplained, ACE continued to charge him for services to that address. A total of \$305.47 was added against his account after his departure. After his departure, petitioner made two payments totaling \$189.00 that were applied against his arrearage at that address.

ACE contends that petitioner owes \$1030.98 from his combined tenancies at 655 Absecon Boulevard and 165 39th Street (R-5). That figure includes \$305.47 that accrued subsequent to his departure.

ACE did not transfer that balance to the account for the Pleasantville condominium. ACE presented documentation showing that petitioner has an arrearage of \$441.36 for that address.

Finally, at trial ACE's counsel argued that petitioner should be responsible for the \$217.80 from 300 Atlantic Avenue, even though ACE agreed to credit him with that amount on September 5, 2007 (R-5).

Accordingly, ACE seeks \$217.80 for 300 Atlantic Avenue, \$1030.98 for 655 Absecon Boulevard and 165 39th Street, and \$441.36 for the Pleasantville condominium. Therefore, ACE seeks the sum of \$1690.14.

Petitioner does not deny that he owes something, but complains that he has been charged for Evans' bill, and cannot determine what he owes.

ACE offered into evidence a lease dated April 23, 2007 (R-6) showing that petitioner and Evans rented an apartment together. That lease was signed three years after the disputed bill for 300 Absecon Avenue, and in no way constitutes evidence that petitioner resided at 300 Absecon Avenue in 2004, or that he ever agreed to be responsible for the electric bill for that premises.

Similarly, ACE attempted to show that petitioner knows the present whereabouts of Evans, and that his current relationship with Evans is greater than mere friendship. Again, the state of affairs in 2008 does not constitute evidence of petitioner's relationship with Evans in 2004.

CONCLUSIONS OF LAW

Initially, I shall address the issue of the \$217.80 from 300 Atlantic Avenue. N.J.A.C. 1:1-15.5, commonly known as the Residuum Rule, states as follows:

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

ACE bears the burden of proof in this case. ACE has presented no credible evidence that petitioner ever agreed to be responsible for Evans bill at 300 Atlantic Avenue. ACE's position is premised solely on Rogozinski's recollection of a file memo written by an unknown person on an unknown date. That memo would constitute double hearsay by itself. Rogozinski's recollection does not even rise to the level of double hearsay. In any event, in no way does her recollection constitute the competent evidence required by N.J.A.C. 1:1-15.5.

Further, I have already found petitioner's denial of any such agreement to be credible and believable. Accordingly, ACE's application for the payment of the \$217.80 arrearage accrued at 300 Absecon Avenue must be **DENIED**.

But as I noted in the Factual Discussion above, despite its current assertion that petitioner owes the \$217.80 from 300 Absecon Avenue, ACE afforded him credit for that amount in 2007 (R-5). Therefore, I am satisfied that the balance of \$1030.98 reflected on R-5 is exclusively for 655 Absecon Avenue and 165 39th Street. No part of

those monies was accrued from Evans' occupancy of either 300 Atlantic Avenue, or the New Castle apartment.

However, I am troubled by the charges accruing after September 2007. ACE agreed that petitioner moved from that premises on that date and commenced occupancy of the Pleasantville condominium. Yet it continued to bill him after he departed 165 39th Street. ACE offered no evidence as to why it continued to bill, and ACE has the burden in this case.

Without such explanation, I cannot award ACE the charges that accrued after petitioner's departure from 165 39th Street. ACE is entitled to the balance of \$914.51 due as of September 21, 2007, its last billing date in September, minus the payments of \$189.00 made by petitioner afterward against the arrearage. Therefore, ACE is entitled to \$725.51.

Finally, petitioner has offered no defense to ACE's claim that he is in arrears for the bill for the Pleasantville condominium. Therefore, ACE is entitled to receive \$441.36 for that premises.

Consequently, Electric is entitled to a total of \$1166.87. All other claims against petitioner must be **DISMISSED**.

ORDER

I **ORDER** that petitioner is liable to Atlantic City Electric for the sum of \$1166.87 for all claims against him.

I **ORDER** that all other claims by Atlantic City Electric against petitioner be **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 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.

February 20, 2008

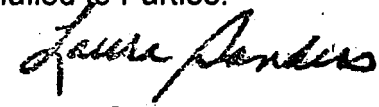
DATE


BRUCE M. GORMAN, ALJ

Date Received at Agency:

2-20-08

Mailed to Parties:


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

FEB 22 2008

DATE

OFFICE OF ADMINISTRATIVE LAW

/sd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Ervin A. Dean, Jr.

For Respondent:

Judith Rogozinski

EXHIBITS

For Petitioner:

Letter to Judy Rogozinski from Selena Evans, January 28, 2008

For Respondent:

Atlantic City Electric Final Bill, April 2004

ICS Receivable History, February 5, 2008 (Acct. 3262298-9999-1)

ICS Receivable History, February 5, 2008 (Acct. 3017372-9999-2)

Electric Bills for Ervin Dean (Acct. 2781419-9996-3)

ICS Receivable History, February 5, 2008 (Acct. 2781419-9994-8)

Residential Lease

Billing Statement (Acct. 2781419-9992-2)