

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center – Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

JULES TONKINSON,
Petitioner,

V

ATLANTIC CITY ELECTRIC COMPANY,
Respondent.

**ORDER DENYING MOTION
FOR RECONSIDERATION**

BPU Dkt. No. EC09090735U
OAL Dkt. No. PUC12095-09

Jules Tonkinson, Turnersville, New Jersey, Petitioner, appearing *pro se*

Renee Suglia, Esq., Wilmington, Delaware, on behalf of Respondent, Atlantic City Electric Company

BY THE BOARD:

On August 26, 2010, Jules Tonkinson ("Petitioner") filed a motion for reconsideration ("Motion") of the New Jersey Board of Public Utilities ("Board") August 4, 2010 Order Adopting the Initial Decision of Administrative Law Judge ("ALJ") W. Todd Miller that, among other things, dismissed Petitioner's complaint against Atlantic City Electric Company ("Respondent").

PROCEDURAL HISTORY

On September 4, 2009, Petitioner filed a petition with the Board regarding a dispute with Respondent. The petition was transmitted to the Office of Administrative Law (OAL) on November 12, 2009 as a contested case. After hearing the matter on May 3, 2010 and receiving post-hearing submissions on May 10, 2010, ALJ Miller filed his initial decision in this matter with the Board on May 24, 2010.

Furthermore, Petitioner provides no citation to the record or support for his assertion that he was not given an opportunity to submit second-hand testimony. In fact, Petitioner did provide second hand testimony regarding his wife. To provide one example, he stated: "I knew she was basically begging you to converse with her. That was my understanding." (T 187:8-10). He went on to discuss the alleged difficulties his wife was having with trying to communicate with Respondent. Therefore, his contention now that he was prohibited from providing second hand testimony is without merit because he was permitted to provide second hand testimony. Petitioner provided no citation to the record or testimony where he was prohibited from testifying.

Petitioner's next two claims are insufficient to warrant reconsideration or modification of the Board Order under D'Atria, supra, 242 N.J. Super. at 401. Petitioner's general assertion that evidence was mishandled is unsupported by any reference to the factual record or legal precedent. Similarly, Petitioner's claim that "A full year has past [sic] since the placement of the meter and a comparison of the last several years, before and after the new meter and socket are now available for comparison," fails to show how the Board Order was palpably incorrect or arbitrary. D'Atria, supra, 242 N.J. Super. at 401.

Petitioner's contention that the issue of requiring a deposit was not addressed also fails to rise to a level that would require reconsideration. The amount of the deposit was discussed during the hearing. There, Respondent's witnesses explained that the deposit is calculated by adding the twelve month usage history then dividing it by twelve to get the average usage. The deposit is equal to two months of that average (T 235:8-21). The Board's regulations regarding the amount of deposit state, in pertinent part, that the amount of deposit shall be calculated by adding the 1) average monthly charge for the service for a 12-month period and 2) one month's average bill. See N.J.A.C. 14:3-3.4. In other words, the amount is equal to two months of the average bill for a 12 month usage period, as was testified to by Respondent's witness. Petitioner has provided no support to otherwise prove that the deposit required is unreasonably high. Thus, even assuming this issue was not fully addressed, Petitioner's argument fails. The Board has reviewed the record in the context of this Motion and determines that the deposit, as calculated by Respondent, appears to be within the Board's regulations.

To conclude, nothing in the procedural or substantive arguments presented now rises to the level to convince the Board that the Initial Decision is fatally flawed or wrong. Therefore, the Board HEREBY AFFIRMS its August 4, 2010 Order Adopting Initial Decision. As such, the Board HEREBY FINDS that the Petitioner's arguments do not rise to the level to require reconsideration or other modification of the Board's Order, and thus the Board HEREBY ORDERS that the motion for reconsideration by Petitioner is DENIED.

Petitioner also requests a stay of collection of the disputed portion of the bill. Petitioner's dispute has been resolved by the issuance of ALJ Miller's Initial Decision and the Board's subsequent Order adopting it. Thus, Petitioner is now required to make payments on the disputed portion of the bill. Moreover, Petitioner's one sentence request for a stay is not supported by any facts or law, and certainly has not provided any indication of good cause, as required by N.J.A.C. 14:1-8.7(d). Additionally, he has not even attempted to make a showing of: (1) a likelihood of success on the merits, (2) irreparable injury to the movant absent a stay, (3) no substantial harm to other parties, and (4) no harm to the public interest. Crowe v.

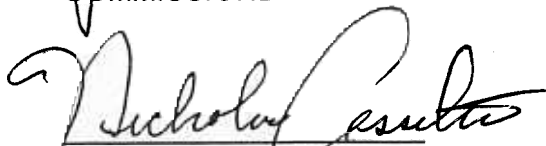
DeGioia, 90 N.J. 126, 132-34 (1982). Therefore, the Board HEREBY DECLINES to continue the stay of the disputed portion of Petitioner's bill.

DATED: 10/20/10

BOARD OF PUBLIC UTILITIES
BY:

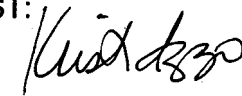

LEE A. SOLOMON
PRESIDENT

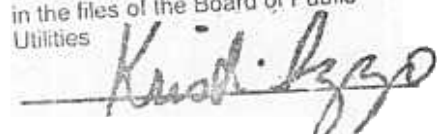

JEANNE M. FOX
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


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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 TONKINSON

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC09090735U

OAL DOCKET NO. PUC12095-09

SERVICE LIST

Jules Tonkinson
8 Brenner Road
Turnersville, New Jersey 08012

Renee Suglia, Esq.
Atlantic City Electric Company
800 North King Street
Wilmington, Delaware 19801

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

Kerri Kirschbaum, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

CUSTOMER ASSISTANCE

BPU DOCKET NO. EC09090735U
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Renee Suglia, Esq., Atlantic City Electric Co., Wilmington, DE, for Respondent

Petitioner, in his September 4, 2009 petition, alleges that Respondent violated the Board's regulations during the period of June 10, 2009 to June 20, 2009. Specifically, Petitioner alleges the following: (1) ACE terminated electrical service on a Friday and without notice; (2) Respondent charged a fee for "Theft of Service" after Petitioner repaired a damaged meter socket and returned the meter to its place, and ACE left Petitioner no information regarding the appropriate procedure for service reconnection; (3) ACE asked for an unreasonable deposit and unreasonable payments on a past due balance; (4) Neither ACE nor the Board inspected the damaged meter, when asked, and the meter readings after the meter had been replaced were

drastically lower than the readings from the old meter, calling into question the previous meter's accuracy; (5) ACE misled Petitioner between June 10 and June 12 as to the required deposit amount necessary to restore service; and (6) Petitioner was promised service would be restored within 12 hours of payment, made Friday June 19 at 4:30pm; however, service was not restored until Saturday June 20 at 6:00pm. Petitioner also challenged an existing past due balance, and sought an independent inspection of the meter, sanctions against the Respondent and a reduction of any deposits or penalties that resulted from the alleged violation.

Answer and Counterclaim

In ACE's October 16, 2009 Answer and Counterclaim, Respondent argued that (1) ACE disconnected Petitioner's electric service on Friday, June 12, pursuant to Petitioner's June 9, Internet request; (2) At the time of disconnection, ACE discovered that Petitioner's meter socket was still in a dangerous condition and had not been repaired; (3) Petitioner reconnected his service without ACE's authorization and Petitioner should have known which steps to take to get reconnected; (4) Petitioner's deposit was properly calculated in accordance with ACE's tariff; (4) Respondent tested the meter in question and found that its readings are well within regulations; (5) Respondent denies Petitioner was misled as to the required deposit to resume service; and (6) Respondent denies that Petitioner was promised a reconnection within 12 hours of payment.

Further, Respondent asserted counterclaims against the Petitioner, alleging: (1) conversion of electric services relating to the unauthorized reconnection and use of service between June 12, 2009 and June 16, 2009; (2) trespass and unauthorized use of system, related to the Petitioner's alleged unauthorized reconnection and use of ACE's service; (3) trespass as to the meter in that Respondent alleged that Petitioner's meter socket was heavily damaged as a result of Petitioner's failure to properly maintain the meter socket, Respondent's meter was also damaged; (4) tampering with the meter, two nails had been found bent through the bottom metal jaws of the meter; and (5) conspiracy to commit conversion, trespass and tampering.

Prehearing Order

Following the January 19, 2010 Prehearing Conference, a Prehearing Order setting forth the procedural schedule and other decisions was issued by ALJ Miller on January 20, 2010. The Prehearing Order discussed, among other things, scheduling of discovery deadlines and evidentiary hearings. The Prehearing Order also notes that the issues to be resolved included whether the Respondent violated regulations for the period of June 12, 2009 to June 20, 2009, whether the Petitioner was entitled to an adjustment of a past due balance, and whether the Petitioner was liable for conversion of electric service for trespass as to its meter and associated equipment, and conspiracy. The hearing was set to commence at 9:30 am on May 3, 2010.

The Prehearing Order also rejected Petitioner's January 18, 2010 request for an adjournment of the pre-hearing conference because his wife was unavailable to participate. Petitioner argued that ALJ Miller should be recused because he was involved in Petitioner's previous case with ACE and was present for an "ex parte inspection of the property and equipment in question."¹

¹ Petitioner's previous allegations that Respondent overcharged him for electric usage and damaged meter sockets, which resulted in an overbilling for usage were dismissed in an Initial Decision issued by ALJ Miller. The Board, after a review of the proceeding, and filed exceptions and replies, issued an Order adopting ALJ Miller's Initial Decision. *Tonkinson, Jules & Lisa v. Atlantic City Elec. Co.*, BPU Docket No.:

ALJ Miller denied the motion, explaining that Petitioner failed to articulate a basis for a recusal as provided in N.J.A.C. 1:1-14.12.

Request for an Adjournment

On April 27, 2010 Petitioner requested an adjournment of the May 3 proceedings because Petitioner received the interrogatories less than 15 days before the hearing, which was not in compliance with the discovery schedule provided in the Prehearing Order. Petitioner also indicated that Respondent would not be ready to proceed on May 3. Respondent affirmed its readiness to proceed and ALJ Miller advised Petitioner that he could respond to the interrogatories to the best of his abilities and failure to answer would not provide Respondent a basis for objection. Further agreements between the parties regarding discovery and exhibits were made.

Request for Interlocutory Review

On April 28, 2010, Mr. Tonkinson filed with the Board a Request for Interlocutory Review of (1) ALJ Miller's denial of Petitioner's request that the ALJ recuse himself from the case and (2) ALJ Miller's April 27, 2010 Order precluding an adjournment of the May 3 proceedings. In a May 12, 2010 Order Denying Request for Interlocutory Review, the Board found that the request for the ALJ's recusal was improperly before the Board. See *Tonkinson v. Atlantic City Elec. Co.*, BPU Docket No.: EC09090735U. The Board found that the request for recusal should have been addressed to the Director of OAL directly and not to the agency. Thus, the Board declined to review ALJ Miller's denial of disqualification request. Secondly, the Board found that the Petitioner failed to demonstrate why the Board should accept interlocutory review of ALJ Miller's April 27 Order. The Board further found there was no indication ALJ Miller denied the request for an adjournment because the parties consented to a resolution on certain issues and Petitioner was advised to answer the late-filed interrogatories to the best of his ability. In short, it was unnecessary for the ALJ to rule on the issue of adjournment. Also, by the time to the Board issued its Order, Petitioner and Respondent had proceeded with the hearing as scheduled, rendering the request moot.

Evidentiary Hearing

The evidentiary hearing proceeded as scheduled on May 3, 2010. ALJ Miller reminded the parties that the issues to be addressed were the allegations that arose during the period of June 12, 2009 through June 20, 2009.(T 19-24 to T 20-8). Petitioner testified on his own behalf, and two ACE employees testified on behalf of Respondent. Exhibits were also entered into the record. During the course of the hearing, Petitioner renewed his request that ALJ Miller recuse himself from the proceeding. ALJ Miller again declined to recuse himself, stating that he has no pecuniary interest in the outcome of this or any biases toward the Petitioner. (T 17-19 to T 18-15).

Initial Decision

On May 13, 2010, ALJ Miller submitted his Initial Decision in this matter to the Board. In his Initial Decision, ALJ Miller found that: (1) in May 2009, Petitioner misrepresented to the Board's Director of Customer Assistance when he informed the Director that he had made the

EC08020099U (April 3, 2009). An Order denying Petitioner's Motion for Reconsideration and a Request for a Stay was issued by the Board on May 15, 2009. No further appeal was taken.

necessary repairs to his meter socket; (2) Petitioner's request that service be changed from his name to his wife's name was the cause of the service termination on June 12, 2009 rather than the unpaid bills; (3) Petitioner reset his meter with finishing nails bent around the prongs, aggravating an already hazardous condition; (4) ACE's repairs, made between June 17, 2009 and June 20, 2009, were done as quickly as possible under the circumstances; and (5) Respondent did not restore Petitioner's service within the promised twelve hour timeframe. ALJ Miller also found the testimony of ACE meter man, Chris Delia, to be reliable because of his years of experience with ACE and because his inspection findings were in work orders made contemporaneously with his inspections, among other reasons. ALJ Miller further found that Petitioner's admitted misrepresentations to Board Staff diminished his credibility. Initial Decision at 5-6.

ALJ Miller notes in his Initial Decision that the issues before him arose from the events that transpired between June 12 and June 20, 2009, and previous determinations regarding a dangerous socket and an outstanding account balance were resolved in a prior proceeding. ALJ Miller adds that the only provision violated by ACE was not restoring service within 12 hours, as required under N.J.A.C. 14:3-3A.9 and Petitioner failed to cite to any other relevant regulation establishing a violation by ACE. Moreover, there is no evidence that ACE coerced Petitioner into making repairs to the meter, and Petitioner himself initiated the shut off request and sought reactivation in his wife's name, a common method of avoiding a shut off due to an outstanding balance. Initial Decision at 8. ALJ Miller concludes that while it took more than 12 hours to restore service, due to inclement weather, Petitioner failed to identify any damages occurring from the delayed restoration. Therefore, no remedy is necessary and the relief sought by Petitioner is denied. *Id.* at 9. Further, ALJ Miller ordered Petitioner to cease and desist from interfering with ACE's property.

As for ACE's counterclaims, ALJ Miller concludes that Petitioner did trespass and engage in unauthorized use of ACE's system by installing his meter back in a defective socket without the authorization from ACE. However, ACE is not granted any monetary remedy because all electric service was billed. The remaining counterclaims were dismissed by ALJ Miller. *Ibid.*

Exceptions and Replies to Exceptions

Exceptions to the Initial Decision were filed with the Board by the Petitioner on May 24, 2009, with Replies to the Exceptions submitted by the Respondent and received by the Board on May 26, 2009.

In the Exceptions, Petitioner alleges that: (1) He had previously requested Interlocutory Review on two issues; (2) ALJ Miller failed to note that Petitioner cited a violation of the Board's customer's Bill of Rights and that ACE disconnected service on June 12, 2009 for nonpayment; (3) ALJ Miller made a prejudicial inference that the "electrician would not pull the boots off the prongs and activate service;" (4) ALJ Miller incorrectly found that the meter socket was still not repaired on June 17, 2009 and Petitioner questions ALJ Miller's characterization of the ACE meter man as reliable; (5) ACE witness, Judith Rogozinski should not have been allowed to give hearsay evidence as to the conversations between Petitioner and representatives of the Respondent; (6) Petitioner's request for adjournment would have provided him sufficient time to produce witnesses; (7) ALJ Miller improperly found the delay to restore service was due to inclement weather; and (8) Respondent should be sanctioned for insufficient instructions on how to remedy the broken meter socket and lack of communication to Petitioner's wife as to the denial of transfer of service prior to June 12, 2009.

Reply

In its Reply, Respondent does not address all of the Exceptions but argues that Petitioner's claim that Respondent disconnected service for non-payment is false. Respondent argues that the disconnection was done at the Petitioner's request. The request to connect service made by Petitioner's wife was denied for several reasons and she was not present at the hearing to testify as to whether she received notification. Respondent objects to any re-hearing of the matter and requests that the Board sustain ALJ Miller's holding.

DISCUSSION

The Board must determine whether Petitioner's filed Exceptions satisfy the requirements provided in N.J.A.C. 1:1-18.4. Pursuant to N.J.A.C. 1:1-18.4, any party may file written exceptions with the agency head within 13 days from the date the judge's initial decision was mailed to the parties and a copy of the filed Exceptions shall be served on all other parties and the judge. Furthermore, Exceptions shall:

- Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge; and
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon. N.J.A.C. 1:1-18.4 (b).

In addition, N.J.A.C. 1:1-18.4(c) prohibits evidence not presented at the hearing to be submitted as part of the Exception, or incorporated or referred to within exceptions.

Exception 1

As previously stated, the Interlocutory Request filed by Petitioner on April 29, 2010 has been ruled on by the Board in its May 12, 2010 Order Denying Request for Interlocutory Review. The Board DECLINES to review ALJ Miller's denial of Petitioner's request that he be recused. Not only does the Board stand by its earlier order on this issue, but under N.J.A.C. 1:1-14.10(l), a party may not seek review of a ruling regarding disqualification of a judge after the judge issues an initial decision in the contested case.

Exception 2

In his Exceptions, Petitioner argues that ALJ Miller's finding in the Initial Decision that Petitioner failed to cite to any specific regulations that ACE violated is inaccurate and re-argues his position that ACE violated the Board's rules when it disconnected service for nonpayment on a Friday. Petitioner does discuss the Board's Consumer Bill of Rights, which appears on the Board's Website at <http://www.state.nj.us/bpu/assistance/rights/> and refers to the regulations contained in N.J.A.C. 14:3. (T 198-19 to 25; T 207 2-15). However, his exceptions here do not properly discuss a specific finding of fact or law to which Petitioner takes exception, as required by N.J.A.C. 1:1-18.4. Moreover, the Board FINDS that the record shows that Petitioner himself requested that his service be disconnected and ACE did not disconnect for non-payment. (T 149-19 to 150-25; Exhibit R-3, Application to Disconnect Service).

Exception 3

In Petitioner's third exception, Petitioner argues that ALJ Miller's conclusion that the electrician hired by Petitioner would not pull the boots off the prongs of the meter to activate service. Initial Decision at 4. Petitioner claims that this conclusion by ALJ Miller is not only in error but also prejudicial, and Petitioner asks that ALJ Miller be removed from this proceeding. First, for the reasons previously stated herein, the Board DECLINES to review Petitioner's repeated requests that ALJ Miller be removed from the proceeding. While the record indicates that Petitioner testified that he did not remove the boots (T 161-17 to 25), Petitioner fails to provide any supporting reasons as to why ALJ Miller's finding was in error. Moreover, if ALJ Miller's finding contradicts with the record, it would not impact the finding by the ALJ that Petitioner admittedly placed the meter back into the socket without authorization from the Respondent. (T 157-1 to 164-14). Accordingly, the Board FINDS that the record supports a finding that Petitioner engaged in the unauthorized use of energy. (T 113-25 to 114-6).

Exception 4

Petitioner also takes exception to ALJ Miller's finding that Petitioner's meter socket was repaired between June 17 and June 19, 2009, and not June 12, 2009, as Petitioner contends. Petitioner further contends that ALJ Miller's finding that the testimony of ACE witness Chris Delia is reliable is indicative of ALJ Miller's bias toward Petitioner. First, it appears that it is not clear from the record when the meter socket was repaired. Delia testified that on June 12th, the meter socket had not been repaired (T 93-16 to 22). Delia further testified that he was not sure if the meter socket had been replaced on the 17th (T 101-11 to 24). Petitioner testified that the meter socket was repaired on either June 11 or June 12, but the permit for the repairs was not issued until June 17, 2010. (T 122-1 to 24). Petitioner also stated that he was unsure whether repairs were completed on June 11 or June 12 but recalled it being the same day as the disconnection, which was June 12. (T 153-16 to 155-25). Petitioner does not argue that a finding by the ALJ that the repair took place on June 12 would result in a different disposition of the case. Instead, Petitioner suggests that the ALJ was biased in determining that ACE's witness was reliable.

N.J.A.C. 1:1-18.6(c) provides that an agency "may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." Petitioner claims in his Exceptions that ALJ Miller's conclusion that ACE Witness Chris Delia was a credible witness is indicative of the ALJ's bias, because the witness' testimony was "confusing and choppy" and he failed to "notice a brand new meter socket." Exceptions at 2. Petitioner does not present any support for these claims and offers no reasonable argument as to why the ALJ's finding was arbitrary and capricious and not supported by credible evidence in the record. Upon review of the record, the Board FINDS that the ALJ's determinations regarding the credibility of the ACE witness was reasonable.

Exception 5

Petitioner also argues that ACE witness Judith Rogozinski should not have been permitted to give hearsay testimony regarding conversations between Petitioner and various ACE representatives. . During the evidentiary hearing, Petitioner objected to ACE Witness Rogozinski's testimony that included her reading of reports created by other ACE customer service representatives. (T 217-13 to 218-22). ALJ Miller overruled Petitioner's objection and

explained that the testimony was admissible under the residuum rule. (T-218-23 to 219-14). The residuum rule, provided at N.J.A.C. 1:1-15.5, permits the admissibility of hearsay evidence as long as "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.

Petitioner fails to make any legal argument as to why ACE Witness Rogozinski's testimony and her authentication of various customer service reports should be dismissed in violation of the residuum rule. Therefore, the Board FINDS that Petitioner's Exception on this issue is without merit.

Exceptions 6

Petitioner takes exception to ALJ Miller's refusal to adjourn the evidentiary hearing scheduled for May 3, 2010. The Board FINDS that it already addressed this issue in its May 12, 2010 Order Denying Request for Interlocutory Review. The Board FURTHER FINDS that Petitioner's Exception does not set forth specific findings of fact or conclusions of law, as required under N.J.A.C. 1:1-18.4.

Exception 7

ALJ Miller found that ACE failed to restore Petitioner's service within 12 hours, as required by N.J.A.C. 14:3-3A.9, but that ACE acted reasonably under the circumstances. ALJ Miller explains in his Initial Decision, and the record reflects, that ACE did not dispute that there was a delay in restoring service, but that the delay was due to inclement weather conditions. (T 242-23 to 243-7; R-7). Petitioner, in his Exceptions, attempts to reargue his position that the delay in restoration of service was a deliberate act by the Respondent. The Board FINDS that Petitioner's claims have no support in the record and that ALJ Miller's findings on this issue are reasonable.

Exception 8

Petitioner, in his Exceptions, also attempts to reargue his position that ACE should be assessed a penalty for failing to provide Petitioner with instructions on how to reconnect his service once service was disconnected. As stated previously, N.J.A.C. 1:1-18.4 provides that exceptions must state specifically and with factual and legal support, the error in fact or conclusion in law made by the ALJ in the Initial Decision. The Board FINDS that Petitioner has failed to meet the requirements of N.J.A.C. 1:1-18.4. Petitioner had his opportunity in the proceeding to provide justification and a legal basis for an assessment of penalties against ACE. The Board FINDS Petitioner failed to identify any damages during the proceeding and ALJ Miller's conclusion that no remedy is necessary to be reasonable and supported by the record.

Accordingly, the Exceptions to the Initial Decision filed by Petitioner are HEREBY REJECTED.

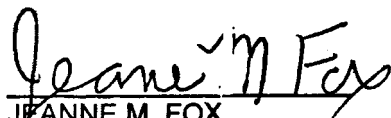
CONCLUSION

Upon review of the record and the parties' filed Exceptions and Reply, and based on the foregoing, the Board FINDS that the findings and conclusions reached in the Initial Decision are reasonable and supported by the record. Accordingly, the Board HEREBY ADOPTS the Initial Decision in its entirety. The Board ORDERS that the petition of Jules Tonkinson be HEREBY DISMISSED.

DATED: 8/4/10

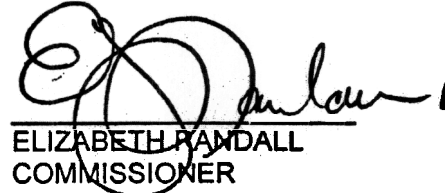
BOARD OF PUBLIC UTILITIES
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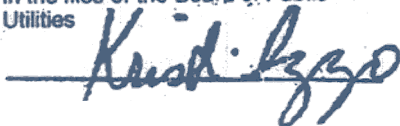

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Jules Tonkinson
8 Benner Road
Turnersville, New Jersey 08102

Renee E. Suglia, Esq.
Pepco Holdings, Inc.
800 N. King Street, 5th Floor
Wilmington, Delaware 19801

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

Jessica L. Campbell, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102

CMS
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~~WILLIAMS~~
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 12095-09

AGENCY DKT. NO. EC09090735U

JULES TONKINSON,

Petitioner,

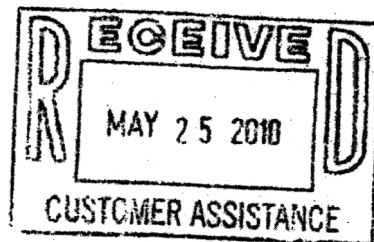
v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

Jules Tonkinson, petitioner, pro se

Renee E. Suglia, Esq., for respondent



Record Closed: May 10, 2010

Decided: May 13, 2010

BEFORE W. TODD MILLER, ALJ:

STATEMENT OF THE CASE

By letter dated February 17, 2009, petitioner, Jules Tonkinson, asserts that Atlantic City Electric Company (ACE or respondent) violated certain regulations during the period of June 12, 2009, through June 20, 2009. The letter does not identify any specific regulation. An Answer and Counterclaim were filed by ACE. ACE denies that it violated any regulations and asserts that petitioner engaged in conversion, trespass, and tampering. For the reasons discussed below, the claims filed by petitioner are **DENIED**, and the counterclaim sought by ACE, is **GRANTED**, in part.

PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was transmitted to the OAL on December 4, 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 May 3, 2010. Post-hearing submissions were received on May 10, 2010. (PH-1). These included customer account comments.

SUMMARY OF RELEVANT FACTS

Petitioner owns a residential property at 8 [B.] Road, []ville, New Jersey. ACE is the electric service provider. On July 25, 2008, ACE inspected petitioner's electric service. ACE determined that the meter box (socket) was leaking water where the cable came through the casing. The seal was dry rotted and cracked.

The meter has four prongs or bayonets. They are a larger version of a common electrical plug. The prongs were corroded and darkened. The plastic casing behind the meter was dry rotted and cracked. The corrosion indicated that the terminals were heating up because of water infiltration. Some of the problems associated with corroded terminals include flickering of lights and other electrical problems. Tonkinson confirmed that his lights were flickering.

ACE concluded that the conditions of the socket presented a hazard after an inspection in July 2009. The socket is the property of the homeowner. Therefore the socket had to be replaced by the homeowner in order ameliorate the safety hazard. See, Jules Tonkinson v. Atlantic City Electric Company, OAL Docket No. PUC 6661-08 (January 8, 2009).

Between July 2008 and June 2009, there were various exchanges between Tonkinson and ACE. Some included the Board of Public Utilities (BPU). These

exchanges involved the restoration of service, repair of the socket, and payments of arrearages. These events and discussions culminated in June 2009.

On June 12, 2009, Tonkinson requested ACE to transfer the account out of his name and into his wife's name (L. Leonard). He made the request online. (R-3). Tonkinsons had a \$5,547.82 past due balance. The company's procedure for transferring an account from one name to another requires the existing account to be closed, and a new account to be opened. This triggered a termination of service at the Tonkinson residence. Normally, the transfer happens without interruption when it involves a qualified individual. However, the request to transfer the account from Jules Tonkinson to his wife was evaluated and denied. The denial was based upon the large past due balance. Consequently, once the account was terminated at the request of Tonkinson, service could not be re-established in the name of his wife. This left the Tonkinson's residential property without service. Tonkinson's son called his dad advised the electric was turned off on June 12, 2009.

The ACE sent a meter person out to the property on June 12, 2009. The work order directed the meter person to evaluate whether the necessary repairs had been made to the socket. (R-1). Tonkinson had advised the Director Hartzfield of the Board of Public Utilities (BPU) in May 2009 that he had completed the repairs to the socket. During the testimony at this hearing, Tonkinson admitted that he lied to the BPU Director. Tonkinson stated, "I made my bed and have to live with it."

The meter person placed boots (plastic covers) over the meter prongs because the repairs had not been made. This terminates the service at the residence. The meter person made the following remarks in the work order: "Repairs still have not been made." "Black sealed socket." (R-1). The terminology "black sealed socket" reflects his opinion that the meter socket remains in an unsafe condition.

Between June 12, 2009, and June 19, 2009, Tonkinson hired an electrician. The electrician provided him with an estimate to repair the faulty socket. (P-2). The meter was in poor condition. Two of the prongs were supposed to have cotter pins at the

base. This prevents them from recessing into the meter. The plastic at the base of the meter was rotted, exposing small openings the meter casing.

The electrician would not pull the boots off the prongs and activate service. Nevertheless, Tonkinson pulled the boots off the prongs and placed 2" finishing nails into the prongs, replacing the missing cotter pins. The nails were significantly larger than the cotter pins and stuck out. The meter was admittedly placed back in the socket by Tonkinson, with the nails. Service was restored by Tonkinson without notice or approval from ACE.

On June 17, 2009, ACE representatives returned to the Tonkinson property. The representative observed that the meter was running and service had been reactivated. The meter was immediately pulled. The socket was still in disrepair. ACE confirmed that finishing nails were wedged into the prongs of the meter. This exacerbated the already existing safety hazard

Between June 17, 2009, and June 19, 2009, the socket was repaired by a qualified electrician. (P-1, P-5). Tonkinson sought reinstatement of the service. But, he still had a significant past due balance. The company and Tonkinson entered into negotiations. Eventually, Tonkinson paid \$3,000 towards the arrearages, with an agreement to pay all current balances when due, together with the remaining arrearages paid over a period of months. On this basis, ACE agreed to reactivate service.

Tonkinson asserts that service must be reactivated within twelve hours. Reactivation would require setting the new meter in the repaired socket. ACE agreed to accept the Tonkinson's payment terms on Friday, June 19, 2009, at 4:40 p.m. Service was not reactivated until Saturday, June 20, 2009, around 6:00 p.m. (R-7, p. 14).

Tonkinson argues that reactivation took in excess of twenty-four hours and is a violation of the regulations, without citing specific regulations. It is undisputed that it took about 24 hours to restore service. ACE contends that it made all reasonable efforts to reset the meter as expeditiously as possible. ACE was experiencing an

inordinate amount of emergencies due to inclement weather. (R-7, p. 16). The weather claim is documented in contemporaneous account notations. Thus, the Tonkinson's reactivation was back logged in response to the weather conditions at the time.

ACE pulled petitioner's meter on or about June 17, 2009. The meter was tested by ACE. The meter tested at 99.662. (R-6). Acceptable tolerance for a meter is between 98.1 and 101.9. ACE asserts there were no erroneous billings as a result of the defective socket. Even though the meter had substantial decay, burnt marks, condensation and other indices of wear and tear, it still yielded reliable information.

FINDINGS OF FACT AND CREDIBILITY

I **FIND** that in May 2009, Tonkinson admittedly lied to the BPU Director. He advised the Director that his service should be reinstated because he made the necessary repairs to his meter socket. The BPU encouraged ACE to work with the Tonkinsons. ACE checked the socket on June 12, 2009, and found it to be in the same state of disrepair as it was in 2009. It presented an electrical hazard to the company workers and to the residents of the home.

I **FIND** that Tonkinson requested that his service be changed from his name to his wife's name on June 12, 2009. This caused his service to be terminated. Tonkinson also had a past due balance in excess of \$5000.

I **FIND** that Tonkinson admittedly reset his meter with finishing nails bent around the prongs, thus aggravating an already hazardous condition. Moreover, he set the meter after the company had pulled the meter due to a shut off request initiated by Tonkinson. By unilaterally placing the meter back in the socket, Tonkinson engaged in unauthorized use of energy (UUE). Furthermore, he attempted to make repairs to the meter, which is not his property. And, the repairs he made were dangerous and created a hazardous condition. His actions were unauthorized and irresponsible.

I FIND that after the ACE repairs were made between June 17, 2009, and June 20, 2009, the company reactivated Tonkinson's services as quickly as possible under the circumstances.

FIND that ACE did not restore Tonkinson's service within twelve hours.

I found the testimony of the ACE meter man to be reliable. He has numerous years of experience with ACE. He reported his inspection findings in work orders contemporaneous with his inspections. He was connected via remote access. The meter man was disengaged from the legal conflicts with petitioner.

Petitioner admittedly provided false information to the BPU and ACE, diminished the reliability of his testimony.

APPLICABLE LAW

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.

N.J.A.C. 14:3-3A.2(a) provides:

Except for residential telephone service that is covered at N.J.A.C. 14:3-3A.8, and subject to the limits below in this section, a public utility may discontinue service for non-payment only if one or both of the following criteria are met, and shall not discontinue service for nonpayment for any other reason:

- 1. The customer's arrearage is more than \$100.00; and/or
- 2. The customer's account is more than three months in arrears.

N.J.A.C. 14:3-3A.1 provides:

(a) The utility shall have the right to suspend or curtail or discontinue service for any of the following reasons:

5. For any of the following acts or omissions on the part of the customer:

i. Refusal of reasonable access to the customer's premises in accordance with N.J.A.C. 14:3-3.6;

ii. Tampering with any facility of the utility;

iii. Fraudulent misrepresentation in relation to the use of service;

*

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.

N.J.A.C. 14:3-3A.9 – Basis for restoration

(a) Service shall be restored within 12 hours upon proper application when:

1. All of the conditions under which such service was discontinued are corrected; and

2. Payment of all charges due is received at the utility, or at an authorized payment center and the utility has received notice of the payment.

In the instant matter, petitioner failed to cite any specific regulation violated by the company. He contends that ACE acted improperly during the period June 12, 2009, through June 20, 2009.

Having personally reviewed the regulations, the only provision violated by ACE was not restoring service within twelve hours. N.J.A.C. 14:3-3A.9. ACE explained that extreme weather conditions impacted the restoration. This was documented in the account notes and not rebutted by Tonkinson.

ACE's prior disputes regarding the account balance and the unsafe socket were previously adjudicated in 2009. No appeals of that decision were taken. This case is limited to the events that transpired between June 12 to June 20, 2009. Therefore it was undisputed that Tonkinson had a balance in excess of \$5000 and that his socket was in disrepair and dangerous.

Tonkinson failed to cite any other pertinent regulation establishing a violation by ACE. There is no evidence that ACE used Tonkinson's past due balance as a means to coerce him into making necessary repairs. In fact, Tonkinson himself initiated the shut off request. A shut off request, followed by reactivation in a spouse's name is a common method of dodging shut offs related to large past due balances. Tonkinson's effort to take the account out of his name and place it in his wife's name was unsuccessful. Fortunately, the result of this entire flurry of activity was the correction of a serious defect. Once service was terminated, Tonkinson had no choice but to fix the defective conditions, which primarily benefited the safety of his family.

Tonkinson's socket is now properly repaired and is in good working order. An electrical hazard has been corrected. The potential for serious injury or property damage has been averted. And Tonkinson's service was restored within twenty-four hours of his request.

CONCLUSIONS

I **CONCLUDE** that the company acted reasonably under the circumstances between June 12 and June 20, 2009, even though there was a delay in restoring service within twelve hours. It took about 24 hours to restore service due to inclement weather. No damages were identified. No remedy is necessary.

I further **CONCLUDE** that Tonkinson engaged in trespass and unauthorized use of system (Counterclaim, Count II) by setting his meter back in a defective socket without authorization by ACE. Again no monetary remedy is necessary as ACE's meter was running and all electric service was billed.

The remaining Counts; Count I – Conversion; Count III – Trespass as to Meter; Count IV – Tampering as to Meter; and Count V – Conspiracy to Commit Conversion, Trespass and Tampering are **DISMISSED**. Count I (conversion) anticipates that Tonkinson either stole the meter or manipulated the meter reading. This did not occur. Count III is redundant with Count II – Trespass. Count IV – Tampering the Meter ordinarily relates to affecting the meter reading. In other words, Tonkinson engaged in an act that slowed the meter down, thus yielding a smaller utility bill. Here trespass of the meter is sufficient to cover petitioner's actions of pulling the meter, removing the boots and placing the nails to activate service. Again, ACE recovered the usage during the time the meter was activated without authorization. Finally, Count V is **DISMISSED** as there was no conspiracy to commit conversion, trespass or tampering.

ORDER

Based upon the forgoing, the relief sought by petitioner is **DENIED**. ACE's counterclaim is **GRANTED** as to trespass and unauthorized use of system (Counterclaim, Count II). The remaining counts are **DISMISSED**.

Petitioner is **ORDERED** to cease and desist from interfering with the property of ACE. Any future violations will result in fines, sanctions or actions as are deemed necessary.

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.

May 13, 2010
DATE


W. TODD MILLER, ALJ

Date Received at Agency: 5/24/10

5-13-10


Date Mailed to Parties:

5-13-10

/sd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Jules Tonkinson

For Respondent:

Chris Delia, meter utility person

Judith Rogozinski

EXHIBITS

For Petitioner:

Meter Socket (Petitioner Retained Exhibit)

P-2 Arthur R. Todd Job Work Order 7676

P-3 Usage Detail

Order Status, June 19, 2009

Construction Permit Notice

Diagram of 100 Amp Service Upgrade

For Respondent:

Order Status, April 30, 2010

Meter (ACE Retained Exhibit)

Customer Account, April 30, 2010 – Application to discontinue service

Usage Statement Spread Sheet

OAL DKT. NO. PUC 12095-09

Lister of Meter IDs

Meter Test Results

Customer's Service Call Record, May 3, 2010

Billing Statement

Post-Hearing:

PH-1 ACE's Account notes on Tonkinson's accounts