



Agenda Date: 5/12/10

Agenda Item: 7A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

JULES TONKINSON,	)	ORDER DENYING REQUEST FOR
Petitioner,	)	INTERLOCUTORY REVIEW
v.	)	
ATLANTIC CITY ELECTRIC AND GAS CO.	)	BPU DOCKET NO. EC09090735U
Respondent	)	OAL DOCKET NO. PUC 12095-09

Jules Tonkinson, Turnersville, NJ, *pro se*

Renee Suglia, Esq., Atlantic City Electric Co., Wilmington, DE, for Respondent

**BY THE BOARD<sup>1</sup>:**

On April 29, 2010, Jules Tonkinson ("Petitioner") filed with the Board of Public Utilities ("Board") a request for interlocutory review of two orders issued by Administrative Law Judge ("ALJ") W. Todd Miller. Atlantic City Electric Company ("Respondent" or "ACE") filed its objections to Petitioner's request on April 30, 2010.

Petitioner filed with the Board on September 4, 2009, a petition requesting a formal hearing regarding a billing dispute with 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 ALJ Miller. A duly noticed pre-hearing telephone conference was held on January 19, 2010 and a pre-hearing order setting forth the procedural schedule and other decisions was issued by ALJ Miller on January 20, 2010.

In the pre-hearing order, ALJ Miller rejected Petitioner's January 18, 2010 request for an adjournment of the pre-hearing conference because his wife was unavailable to participate. ALJ Miller explained that the request was denied because Petitioner's wife is not a party to the proceeding and because Petitioner failed to seek or obtain from Respondent consent to the adjournment. According to the pre-hearing order, attempts to contact Petitioner at his home or cell phone numbers were not successful.

After setting forth the issues to be resolved, scheduling the date of the evidentiary hearing for May 3 and providing discovery guidelines, ALJ Miller denied Petitioner's January 18, 2010 request to have this matter reassigned to another ALJ. In his request, Petitioner explains that the ALJ Miller should be recused from the matter, because he was involved in Petitioner's previous case with ACE and was a present for an "*ex parte* inspection of the property and

<sup>1</sup> Commissioner Elizabeth Randall did not participate in this matter.



equipment in question."<sup>2</sup> The ALJ 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.

On April 27, 2010, Petitioner requested that the evidentiary hearing scheduled for May 3, 2010<sup>3</sup> be postponed in order to respond to interrogatories propounded by Respondent. Petitioner explained that he received the interrogatories on April 23, 2010, nine days before the evidentiary hearing. In an order issued on April 27, 2010, ALJ Miller indicates that he advised the Petitioner to respond to the interrogatories to the best of his abilities, but, because the interrogatories were received less than 15 days before the hearing, ACE would not have a basis upon which to object to Petitioner's failure to respond to the requests. The Order also noted that Respondent agreed to Petitioner's request that the meter removed from his property by ACE be brought to hearing. Petitioner also indicated that he would be presenting a video at the hearing, but would not be able to supply ACE a copy of the video prior to the hearing. However, ACE would have an opportunity to review the video prior to the taking of testimony. The ALJ also stated that the parties consented to the resolutions to these discovery concerns and that the Petitioner's postponement request was no longer an issue. Finally, ALJ Miller noted that the issues to be determined in the proceeding will be resolved by any pre-trial motions at the May 3, 2010 hearing.

#### **Petitioner's Request for Interlocutory Review**

On April 29, 2010, Petitioner filed with the Board a Request for Interlocutory Review of ALJ Miller's denial of Petitioner's January 18, 2010 request that the ALJ recuse himself from the case and the ALJ's order of April 27, 2010. Petitioner also requests that the Board recommend rescheduling the May 3, 2010 hearing for a later date so that the Board has time to consider his request.

First, Petitioner argues that ALJ Miller's refusal to grant Petitioner's request that the ALJ Miller be disqualified himself hearing the case was improper, because the ALJ had presided over Petitioner's previous dispute with ACE. Petitioner also claims that the ALJ had participated in two *ex parte* discussions with Respondent even though Petitioner explained why he was unavailable to participate in the conference calls. Moreover, Petitioner argues that these discussions give a "biased appearance" that could be grounds for appeal, and that a "fresh set of eyes" to the case would be beneficial.

Additionally, Petitioner argues that ALJ Miller should have granted his request to adjourn the hearing date so that Petitioner would have adequate time to prepare his own case and respond to ACE's discovery requests. Petitioner also claims that he suspects that neither side is prepared to move forward to hearing, but ALJ Miller continues to press on and insist that the issues be resolved at hearing.

There has been no indication that Petitioner has filed with ALJ Miller a request for a stay of the decisions being disputed.

---

<sup>2</sup> 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.: 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.

<sup>3</sup> Petitioner erroneously referred to a May 2, 2010 hearing date in his submission to the ALJ.



### Respondent's Opposition to Petitioner's Request

In its April 30, 2010 letter to the Board, Respondent objects to any adjournment of the May 3, 2010 trial date. Furthermore, ACE states that Petitioner has failed to appear at scheduled hearings and conferences and alleges that Petitioner's request for interlocutory review is a delay tactic. Respondent also objects to Petitioner's characterization of discussions with ALJ Miller as *ex parte*.

Respondent also claims that ALJ Miller did not deny Petitioner's request for an adjournment of the hearing, but instead noted that the issues were satisfied that there was no continuing request for an adjournment. Respondent urges the Board not to give interlocutory review to an issue that was resolved. Finally, ACE states that it is prepared to try the case on May 3, and the discovery propounded by ACE supports ACE's counterclaim and not the underlying case in chief.

### Discussion

Pursuant to N.J.A.C. 1:1-14.10(b), a request for interlocutory review shall be made to the agency head within five business days from receipt of the written order. The request must be in writing and shall include the written order or summary of the oral ruling sought to be reviewed. A party opposing the request may submit its objections within three days of receipt of the request. Furthermore, as provided in N.J.A.C. 1:14-14.4(a), the Board is required to make a determination as to whether it will accept review by the later of 1) ten days after receiving the request of interlocutory review or 2) at the Board's next regularly scheduled meeting held after the expiration of the 10-day period.

Under N.J.A.C. 1:1-14.10(k), a decision regarding the disqualification of an ALJ "due to interest or any other reason which would preclude a fair and unbiased hearing," should be addressed by the Director of Administrative Law. As discussed above, Petitioner has requested that the Board review ALJ Miller's denial to recuse himself from the proceeding, because of a "biased appearance." Petitioner's papers do not indicate that any such request has been made to the Director of Administrative Law, a necessary step. As such, the Board HEREBY FINDS that Petitioner's request is improperly before the Board and DECLINES to review ALJ Miller's denial of the disqualification request.

The legal standard for accepting a matter for interlocutory review is set forth in In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982). There, the Court concluded that

[a]s in a court case, interlocutory review may be granted only in the interest of justice or for good cause shown. In the administrative arena, good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that such an interlocutory order will have an impact upon the status of the parties, the number and nature of claims or defenses, the identity and scope of issues, the presentation of evidence, the decisional process, or the outcome of the case. Interlocutory orders of this character can influence the soundness of the adjudication and the integrity of administrative regulations.

[Id. at 100-101]



Moreover, interlocutory review may be granted if "there is the possibility of 'some grave damage or injustice' from the trial court's order." Brundage v. Estate of Carl Carambino, 195 N.J. 575, 599 (2008) citing Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956).

Petitioner objects to ALJ Miller's decision to proceed with hearings on May 3, 2010. However, there is no indication that ALJ Miller denied Petitioner's request. In its correspondence to the ALJ on April 27, 2010, Petitioner complains that he does not have adequate time to respond to ACE's interrogatories and asks for a postponement of the hearing date. The Order issued by ALJ Miller on the same day indicates that Petitioner was instructed to use his best efforts to respond to the requests, but that ACE would have no basis upon which to object if Petitioner fails to respond to the requests. Furthermore, the ALJ found that "[t]he parties consented to both of the aforementioned resolutions and the postponement request was no longer in issue."

The Board HEREBY FINDS that Petitioner fails to demonstrate why the Board should accept interlocutory review of ALJ Miller's April 27, 2010 Order. Furthermore, Petitioner's arguments that neither party is prepared to proceed are without merit. Not only does Respondent state that it is prepared to proceed to hearing, but the April 27 Order shows that Petitioner, who indicates that he intends to present a tape at hearing, seems prepared to proceed as well. Additionally, the Division of Law has learned that Petitioner did appear at and participate in the scheduled May 3<sup>rd</sup> evidentiary hearing at the OAL. This revelation renders this request moot.

After full review of the ALJ's Orders, Petitioner's request for interlocutory review, and Respondent's filed objections, the Board HEREBY DENIES the request of interlocutory review.

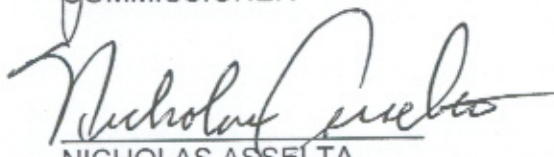
DATED: 5/12/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

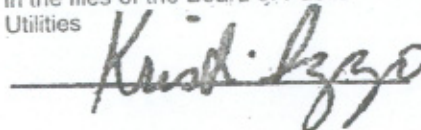
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
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



JULES TONKINSON

v.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC09090735U  
OAL DOCKET NO. PUC 12095-09

SERVICE LIST

Jules Tonkinson  
8 Benner Road  
Turnersville, New Jersey 08102

Renee E. Suglia, Esq.  
Pepco Holdings, Inc.  
800 N. King Street, 5<sup>th</sup> 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