



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

CUSTOMER ASSISTANCE

MORTON P. KRAMER,)	ORDER ADOPTING INITIAL
Petitioner,)	DECISION
)	
V.)	
)	
JERSEY CENTRAL POWER & LIGHT COMPANY,)	BPU DKT. NO. EC09030203U
Respondent.)	OAL DKT. NO. PUC2762-09

Morton P. Kramer, Long Branch, New Jersey, appearing *pro se*

Michael J. Connolly, Esq., Morgan, Lewis & Bockius, LLP, Morristown, New Jersey, on behalf of Respondent, Jersey Central Power & Light Company

BY THE BOARD:

By petition filed with the Board of Public Utilities (Board) on April 16, 2009, Morton P. Kramer (Petitioner) challenged a bill for electric services rendered by Jersey Central Power & Light Company (Respondent) during a period that Petitioner was allegedly not in residence at his condominium. After receipt of Respondent's answer, this matter was transmitted by the Board to the Office of Administrative Law for hearing as a contested matter on April 23, 2009, where it was assigned to Administrative Law Judge (ALJ) Patricia M. Kerins.

On November 1, 2010, ALJ Kerins issued her Initial Decision in this matter which was received by the Board on November 10, 2010. A copy of the Initial Decision is attached hereto and made a part hereof. At its December 15, 2010, January 19, 2011, and March 9, 2011 Board meetings, staff recommended and was granted 45-day extensions of time for review and issuing a final decision. No exceptions to the Initial Decision have been filed with the Board by either the Petitioner or the Respondent.

The procedural history of this matter before ALJ Kerins as well as her findings and conclusions and her legal analysis, are set forth in the Initial Decision at pages 1-2, 2-4 and 4-5, respectively, and need not be restated at length herein. Notably, ALJ Kerins concluded that Petitioner testified credibly as to the periods over the winter of 2008-2009 and in March 2010, when he and his wife were not in residence. ALJ Kerins found Petitioner's testimony credible that it was his practice to turn the circuit breakers off in the unit during those periods. ALJ

Kerins also found that the evidence presented by Respondent showed that the electric meter for the unit during the periods in question was functioning properly. ALJ Kerins noted that while those facts may seem at odds, Petitioner bore the burden of proof. Accordingly, ALJ Kerins determined that Petitioner had not met his burden.

At the March 9, 2011 Board meeting, the Board questioned how the ALJ's credibility determinations and factual findings could be reconciled. The Board, therefore, asked staff, among other things, to further review the record to examine Respondent's actions and to determine whether an investigation by an electrician as to the cause in the unexplained spike in electricity bills during the winter months was, or could be, conducted.

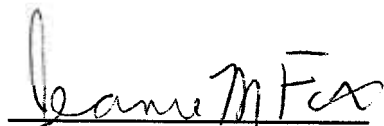
After a thorough and careful review and consideration of the entire record, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them. Therefore, based on the foregoing, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition of Morton P. Kramer be HEREBY DISMISSED.

DATED: 4/27/11

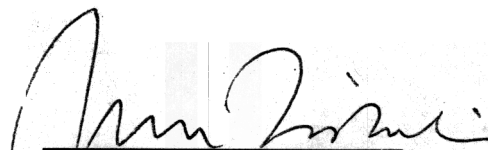
BOARD OF PUBLIC UTILITIES
BY:



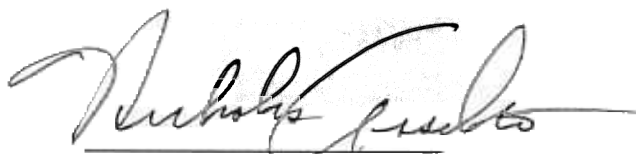
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

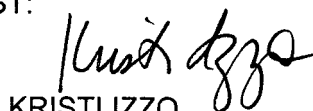


JOSEPH L. FIORDALISO
COMMISSIONER



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



MORTON P. KRAMER

v.

JERSEY CENTRAL POWER & LIGHT COMPANY

**BPU DOCKET NO. EC09030203U
OAL DOCKET NO. PUC2762-09**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

INITIAL DECISION

OAL DKT. NO. PUC 2762-09

AGENCY DKT. NO. EC09030203U

MORTON P. KRAMER,

Petitioner,

v.

JERSEY CENTRAL POWER
AND LIGHT COMPANY,

Respondent.

Morton P. Kramer, petitioner, pro se

Michael J. Connolly, Esq., for respondent (Morgan, Lewis & Kirschbaum
attorneys)

Record Closed: September 15, 2010

Decided: November 1, 2010

BEFORE PATRICIA M. KERINS, ALJ.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter involves a dispute over billing for electrical services rendered to petitioner Morton Kramer (Kramer). Petitioner asserts that he was improperly billed for electrical usage while not in residence at his condominium, and that even while in residence, his bills for certain months were too high. Respondent Jersey Central Power

*CMG
Beslow
Kirschbaum
and Ass.*

and Light (Jersey Central) contends that the billing of petitioner's account was proper and reflected electric services as monitored by the condominium unit's electric meter.

This matter was transmitted to the Office of Administrative Law (OAL) on May 4, 2009, for hearing as a contested case. After assignment to ALJ Israel Dubin, a telephone conference was held on July 29, 2009, and the matter was scheduled for a hearing on May 11 and 12, 2010. The parties requested an adjournment of those hearing dates and the matter was rescheduled to September 14, 2010 and reassigned to me. The hearing was held on September 14, 2010, and the record closed.

FACTUAL DISCUSSION

Petitioner and his wife reside in a two-bedroom condominium unit in a high rise building in Long Branch, New Jersey with approximately one hundred thirty units. The Kramers' unit consists of a small kitchen, living room, dining room, two bedrooms and two baths. It is all electric, with one unit providing heat and air conditioning. Each condominium in the building has its own electric meter and service is provided by respondent. The meters are located in the meter room on the first floor of the building. The Kramers have resided there for eighteen years, and within the last decade began to spend time in Florida. They now reside in Florida six to seven months of the year.

The disputed bills in this matter relate to months in 2008-09 and one month in 2010. Kramer testified that in 2008 the couple left for Florida on October 16, 2008. In preparation for their departure, he shut down the switches in the unit's circuit breaker box. When the Kramers returned for Thanksgiving that year, they went directly to their daughter's home in Mendham, New Jersey. On November 26, 2008, Kramer was admitted to the hospital for heart bypass surgery. Upon his discharge on December 5, 2008, he convalesced at his daughter's home until December 29, 2008. On December 28, 2009, he contacted his building's staff to request that the circuit breakers and heat be activated. The Kramers resided in the Long Branch condominium from December 29, 2008, to January 25, 2009, returning to Florida on that date. The couple did not return to the Long Branch condominium until March 26, 2009. Kramer credibly testified

that between October 16, 2008, and March 26, 2009, the couple spent a total of twenty-eight (28) days in the unit.¹ According to petitioner, aside from the couple, no one except the building manager had a key to the condominium unit and that the building's head of maintenance periodically checked the unit while the Kramers were away.

The parties agreed at the hearing that the amounts in dispute arise from the three bills covering the period November 27, 2008 through February 27, 2009 (R-2). Those bills are \$677.06 for the period November 27, 2008 to December 29, 2008; \$1,248.08 for December 30, 2008 to January 29, 2009, and \$805.33 for January 30, 2008 to February 27, 2008.² Petitioner also disputes \$239.58 of his April 1, 2010 bill for \$470.98 as the couple were in residence only from March 10 to 25 of that period. The total amount in dispute between the parties is \$2,961.81.³ Through his testimony and oral argument, petitioner contended that the disputed bills were in error due to his absence from the condominium and his disabling of the circuit breakers. He further argued that the usage for which he was billed during that period was excessive in comparison to his overall usage patterns. To support his claim he presented several charts. They detailed his absence from the unit during the time in question (P-2), comparisons of his electrical usage during the summer of 2010 and the 2008-09 period in question (P-3), as well as a comparison of usage during the 2008-09 winter and the winter of 2009-10 (P-4). He also noted that during the period 2006-10 respondent replaced his meter at least twice.

In response, Jersey Central presented the testimony of Anthony Menio, a regional supervisor in its central region. Menio was qualified as an expert in meter testing and operation. He reviewed the history of the meters installed for petitioner's unit, as well as their test results (R-3 to 6) and testified that the meter in use during the periods in question was functioning properly. In addition, Barbara Sheridan, a regional customer advocate for Jersey Central, testified as to respondent's billing practices and

¹ The parties stipulated that Kramer's wife and daughter would have testified to the same facts as petitioner if they had appeared and provided testimony.

² Petitioner was originally billed for \$1,332.16 but respondent adjusted that bill on February 17, 2009. (P-1)

³ Petitioner moved to amend this matter to include alleged discrepancies in 2007 bills from respondent. His request was based upon a challenge to the method by which respondent "rebilled" after making an account adjustment. Respondent opposed the amendment, citing its untimeliness and arguing that those bills were resolved by agreement in a prior petition filed by Kramer. (R-1) The motion was denied.

the handling of Kramer's billing dispute. Noting that bills are done on meter reads, she advised petitioner of his right to have a Board of Public Utilities meter test but he chose not to do so. Given the dispute at hand, she directed that Jersey Central staff remove the unit's meter and test it.

Based upon the testimony and the record in this matter, I **FIND** that petitioner testified credibly as to the time periods he and his wife occupied their condominium and as to his efforts to disable the circuit breakers in the unit. I further **FIND** that the electric meter for the condominium unit was functioning properly as set forth in the credible testimony of respondent's expert witness, Anthony Menio.

LEGAL DISCUSSION

Petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). This petition raises the issue whether Kramer has been properly charged for electrical services to his condominium during months when he was not in residence for all or a portion of the month.

This matter is governed by the provisions of the applicable regulations and the respondent's tariff. A tariff is a published schedule of rates, filed by a public utility, and thereafter, in the absence of successful challenge, is applicable equally to all customers. Its application may or may not have been preceded by a rate-making hearing. Such a tariff is not a mere contract. It is the law, and its provisions are binding on a customer whether he knows of them or not. Application of Saddle River, 71 N.J. 14, 29 (N.J. 1976); Essex County Welfare Bd. v. New Jersey Bell Tel. Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974).

The respondent's tariff (R-9) states in Section 3.01:

Measurement of Electricity Consumption: The Service provided to the Customer will be measured separately for each Point of Delivery by metering. Bills will be based upon the registration of such metering

equipment except as may be otherwise provided in this Tariff. Such registration shall be conclusive as measuring the quantity of Service received by the Customer except when the metering equipment fails to register or is determined to be registering outside the limits of accuracy prescribed by the BPU. In some instances the Company may, at its sole discretion, allow for unmetered Services.

The facts of this dispute present a conundrum. Kramer credibly testified as to periods over the winter of 2008-09 and in March 2010 when he and his wife were not in residence. He also testified credibly that it was his practice to turn circuit breakers off in the unit during those periods. Yet, the evidence presented by respondent showed that the electric meter for his unit during the periods in question was functioning properly. While those facts may seem at odds, petitioner bears the burden in this case. The record therefore must be examined to determine if he has presented sufficient evidence to rebut the fact that respondent's billings were based, pursuant to its tariff, upon the readings of a properly functioning meter.

Petitioner has not met that burden. Aside from the fact of his nonresidence at the unit, he has not established sufficient facts to rebut the evidence presented by respondent that the meter was functioning properly and that the resulting bills were appropriate pursuant to the terms of its tariff. Simply put, if he was not in residence, and the meter was functioning properly and registering electric usage, that usage must have had a cause. Someone other than the Kramers could have used the unit without their knowledge. Petitioner's efforts to disable the circuit breakers could have been ineffective for some reason, or perhaps the building staff with access to the unit mistakenly turned on the unit's systems and appliances.

I **FIND** that this matter is governed by the provision of the tariff filed by respondent (R-9) with the Board of Public Utilities. I **FIND** that the electric service provided to petitioner is measured by metering, and under the terms of the tariff, bills based upon the registration of such metering equipment shall be conclusive as measuring the quantity of service received by the customer. Since the metering equipment has been determined in this case to be accurate and petitioner has not

submitted sufficient proofs to rebut such accuracy, **FIND** petitioner's claim of overbilling must fail and should be **DISMISSED**.

ORDER

For the reasons stated above, I hereby **ORDER** that this matter, involving a dispute regarding billing for electrical services rendered to petitioner, is **DENIED** and **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

LIST OF WITNESSES

RECEIVED
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PUBLIC UTILITIES

For petitioner:

Morton P. Kramer

For respondent:

Anthony Menio
Barbara Sheridan

LIST OF EXHIBITS

For petitioner:

Letter to Morton Kramer from Jersey Central Power & Light, dated
February 17, 2009
P-2 Residence Charts
P-3 Usage Chart
2008-09 and 2009-10 Comparison Chart
Billing Chart

For respondent:

Letter to State of New Jersey Board of Public Utilities from Morton
Kramer, dated October 30, 2007
Jersey Central Power & Light Detailed Statement of Account for Morton
Kramer
Data Environment
Display Results: Characteristic Overview for June 25, 2007
Display Results: Characteristic Overview for April 28, 2006, and May 21,
2003

Display Results: Characteristic Overview for May 12, 2010

- R-8 Computer Printout regarding Kramer inquiry, dated February 3, 2009
Jersey Central Power & Light Section 3 – Billings, Payments, Credit
Deposits and Metering