



CUSTOMER ASSISTANCE

BPU DKT NO. EC13020115U
OAL DKT NO. PUC 5255-13S

Ted and Barbara Miller, pro se
Pamela J. Scott, Esq., Atlantic City Electric Company

BY THE BOARD:

On February 5, 2013, Ted and Barbara Miller ("Petitioners") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing concerning a billing dispute with Atlantic City Electric Company ("Respondent" or "Company"). Petitioners claimed that they were overcharged for electric service from August 9, 2012 through September 11, 2012, as a result of a malfunctioning meter. Petitioners supported this claim by alleging that their meter reading was significantly higher for that one month period in 2012, than their record of usage for the same month during previous years. Petitioners also alleged that after the meter was removed for testing and replaced, usage registered by the replacement meter was consistent with the lower usage registered in previous years. Petition at 1.

Respondent filed an Answer on March 2, 2013, denying the allegations that the meter was not functioning properly and that Petitioners were overcharged.¹ Respondent explained that it re-read Petitioners' meter on September 19, 2012 and October 12, 2012, and subsequently removed and tested the meter on October 22, 2012. The meter test results indicated that the meter was functioning within acceptable limits, displaying an accuracy level of 100.10%. The

¹ Respondent's Answer references a downward adjustment of \$707.05 to Petitioner's bill covering August 9, 2012 through September 9, 2012. Answer at page 1. Respondent explained that this adjustment was made to reflect actual versus estimated usage and had no bearing on the accuracy of the Company's meter reading or the functioning of the meter, both of which were found to be accurate. (Tr. 9:12-25; 12:1-25; 13:1-25; 14:1-5; 15:10-21).

test results also confirmed the accuracy of the readings performed on September 19, 2012 and October 12, 2012. Answer at 1.² On April 17, 2013, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 et. seq., and assigned to Administrative Law Judge ("ALJ") Kassekert for a hearing.

ALJ Kassekert conducted an evidentiary hearing on June 6, 2013. Barbara Miller ("Ms. Miller") testified for Petitioners. Petitioners introduced a chart displaying the results of their monthly meter readings and electric bill charges for 2007 through 2012. Exhibit P-1 at 2. Through this illustration, Petitioners sought to show that their meter reading for the period of August 9, 2012 through September 11, 2012, was significantly higher than their record of usage for the same month during previous years. (Tr. 44:7-16). For instance, the chart indicated that from August 9, 2011 through September 9, 2011, Petitioners were billed for usage of 1,140 kWh of electricity. During that same period in 2012, the chart demonstrates that Petitioners were billed for their usage of 5,823 kWh of electricity. Ms. Miller testified that this increase in registered usage during the September 2012 time frame could not have been accurate because there had been no changes between 2011 and 2012 "as far as the electrical equipment in the house." (Tr. 56:14-57:3).³ Ms. Miller further testified that after the Company replaced Petitioners' meter on October 22, 2012, the monthly readings registered reduced usage consistent with prior years. (Tr. 44:17-24). Based on that evidence, Petitioners believe they were overcharged due to a miscalculation of their usage.

Respondent presented the testimonies of Marianne Murphy, ("Murphy") Senior Analyst, Customer Relations for Pepco Holding Company, Inc.,⁴ and Robert Polk, ("Polk") a Senior Associate Engineer for Atlantic City Electric. Murphy testified that in response to Petitioners' initial complaint of an overcharge, she dispatched a Company meter service technician to their home in September and October of 2012, to re-read Petitioners' meter. (Tr. 9:12-20). According to Murphy, the re-reading "verified the accuracy of the readings that were used as the basis for [Petitioners'] monthly bills." (Tr. 10:1-4).

Polk testified that Petitioner's allegedly inaccurate meter, #078356575, was removed on October 22, 2012, and sent to Respondent's meter shop in Delaware for testing. (Tr. 26:19-23). Polk explained that on December 12, 2012, meter #078356575 was tested on both a light and a full load, with test results indicating an average accuracy of 100.128%. Tr. 27:1-30:7.⁵ Respondent supported this testimony by submitting an AML Device Management/EMT Device Inquiry report which displayed the test results. Exhibit R-3.

On July 17, 2013, ALJ Kassekert issued an Initial Decision dismissing the petition. ALJ Kassekert found that meter #078356575 was removed from Petitioners' home on October 22, 2012 and tested on December 12, 2012. Initial Decision at page 4. ALJ Kassekert found that the meter was tested on both a light and a full load and that the test results indicated that the meter was 100.128% accurate. Ibid. Noting that the test results were over 100% but within two percentage points, ALJ Kassekert found that the meter was accurate in accordance with

² Petitioners also filed a response to Respondent's Answer on April 2, 2013, in which they objected to the timeliness of Respondent's Answer and reiterated the claims of their petition.

³ "Tr" refers to the June 6, 2013 evidentiary hearing transcript in this matter.

⁴ Pepco Holding Company, Inc., is the parent company of Atlantic City Electric Company.

⁵ N.J.A.C. 14:5-4.3(c) provides: "For periodic testing, the accuracy shall be determined by taking the average of the percentage registration at light load and heavy load." N.J.A.C. 14:5-4.3(d) provides: "As used in this section, light load shall be approximately five to ten percent of rated current and heavy load shall be not less than 60% nor more than 150% of rated current."

N.J.A.C. 14:3-4.6(a).⁶ Initial Decision at 5. ALJ Kassekert further concluded that Petitioners failed to provide any legally competent evidence to support the claim that the meter was inaccurate. No exceptions were filed by either party.

DISCUSSION AND FINDINGS

After review and consideration of the entire record, the Board **HEREBY FINDS** that the findings and conclusions of the ALJ are reasonable and, accordingly, **HEREBY ADOPTS** the Initial Decision.

The Board gives great weight to tests that measure a meter's accuracy. Ravi Kohli v. Jersey Central Power and Light Company, BPU Dkt. No. EC10070506U (May 16, 2011); Reno Wilkins v. Public Service Electric and Gas Company, BPU Dkt. No. GC10050372U (May 16, 2011). N.J.A.C. 14:5-4.3(a) provides: "No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment." N.J.A.C. 14:3-4.6(a) provides:

Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided

[N.J.A.C. 14:3-4.6(a)].

Our review of the record indicates that on October 22, 2012, Petitioners' meter was removed and tested for accuracy, pursuant to N.J.A.C. 14:5-4.3. The meter results indicated a reading of 100.28%, which is within two percentage points, plus or minus, as allowed under N.J.A.C. 14:5-4.3(a). The results of the meter test provide no basis to determine that the meter was malfunctioning and thus, no grounds to adjust Petitioners' electric bill for the disputed period. See N.J.A.C. 14:3-4.6.

In accepting ALJ Kassekert's finding that meter #078356575 was accurate in accordance with N.J.A.C. 14:3-4.6(a), the Board is mindful of Petitioners' claims that their meter reading for the period of August 9, 2012 through September 11, 2012 was significantly higher than readings for the same period in previous years and that a replacement meter yielded readings that were lower, consistent with prior years. However, in prior cases the Board has found similar allegations insufficient to overcome the weight accorded to a meter test. Kohli, *supra*, at pages 7-12 (upholding the ALJ's finding that the meter was accurate on the basis of a meter test notwithstanding Petitioner's allegation of a "precipitous drop in usage recorded by the new meter as against the old"); Wilkins, *supra*, at 12 (notwithstanding evidence that registered consumption decreased upon meter replacement, lowered consumption can be attributed to any number of factors including a reduction in usage.); Edna M. Elco v. Public Service Electric and Gas Company, 96 N.J.A.R.2d 39 (Bureau of Regulatory Commissioners 1995) (upholding the ALJ's finding that the meter was accurate on the basis of the meter test results notwithstanding petitioner's allegation that she had widely fluctuating monthly bills which were consistently

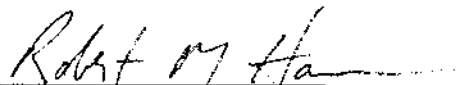
⁶ N.J.A.C. 14:5-4.3(a) provides: "No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment."

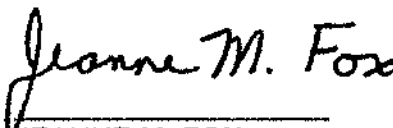
higher than her neighbor's bills in the same building.); Presidential Apartments v. Hackensack Water Company, 93 N.J.A.R.2d 68 (Bureau of Regulatory Commissioners 1992) (upholding the ALJ's finding that the water meter was operating within allowable limits notwithstanding the petitioner's assertion that a replacement meter registered a 21.93% comparative decline in water usage of over a six month period). The Board finds no basis under the instant facts, to deviate from its findings in these matters.

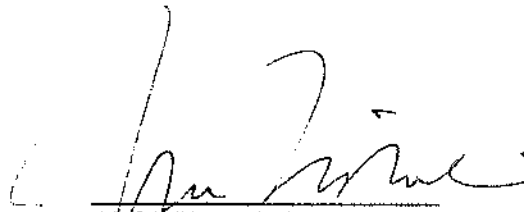
Upon careful review and consideration of the record, and based on the foregoing, the Board **HEREBY ORDERS** that the Initial Decision be and is hereby adopted and the Petition is **HEREBY DISMISSED**.

DATED: 10/16/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

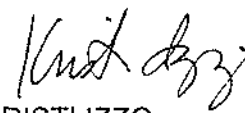

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SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
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Utilities



TED AND BARBARA MILLER, Petitioner

V.

ATLANTIC CITY ELECTRIC COMPANY, Respondent

BPU DOCKET NO. EC13020115U

OAL DOCKET NO. PUC5255-13

SERVICE LIST

<p>Ted and Barbara Miller 812 Tillson Road North Myrtle Beach, SC 29582</p> <p>Pamela J. Scott, Esq. Atlantic City Electric Company 500 N. Wakefield Drive Newark, DE 19702</p> <p>Youngblood, Lafferty & Sampoli Cornerstone Commerce Center 1201 New Road, Suite 230 Linwood, NJ 08221</p> <p>Carolyn McIntosh, DAG Division of law 124 Halsey Street Post Office Box 45029 Newark, NJ 07101-45029</p>	<p>Eric Hartsfield, Director Division of Customer Assistance Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Julie Ford-Williams Division of Customer Assistance Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350</p>
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 5255-13

AGENCY DKT. NO. EC13020115U

TED AND BARBARA MILLER,

Petitioners,

v.

ATLANTIC CITY ELECTRIC,

Respondent.

Ted and Barbara Miller, petitioners, pro se

Pamela J. Scott, Esq., for respondent

Record Closed: June 6, 2013

Decided: July 17, 2013

BEFORE **LINDA M. KASSEKERT, ALJ**:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners, Ted and Barbara Miller, filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Atlantic City Electric (ACE) for electrical service provided to their property at 103 E. 25th Street, Spray Beach, New Jersey.

On April 17, 2013, this matter was transmitted to the Office of Administrative Law for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F-1 to -13. The hearing was held on June 6, 2013, and the record closed on that date.

FACTUAL DISCUSSION

The following is undisputed and is found as **FACT**:

The petitioners own a property in Spray Beach, New Jersey and are customers of ACE. Their account number is 1385 9469 9991. This residence is petitioners' second home; they spend summer in this location and have a primary residence in South Carolina. Their September 2012 bill, which was due October 2, 2012, showed electric charges totaling \$1,139.06. This amount exceeded the yearly average for their electric costs from January 2007 through December 2011, which was \$1,054.24. As a result, petitioners believed that there was something wrong with their meter and filed a complaint with the BPU.

TESTIMONY

Marianne Murphy

Marianne Murphy is a Senior Analyst, Customer Relations for Pepco Holding Company, Inc. (PHI). ACE is a subsidiary of PHI. She has been employed by PHI for fifteen years and in her current position for seven years. Ms. Murphy was assigned to investigate this matter. She testified that she analyzed the account by reviewing the monthly meter readings, the actual meter readings and having the meter tested. Ms. Murphy identified the usage statement (R-1), that showed that for September 2012, the reading was 2236. This compared with September 2011, when the reading was 1140. It should be noted that there were two more billing days in September 2012 as compared to September 2011.

Ms. Murphy next identified the September 2012 billing statement (R-2) which covered the period of August 9, 2012, to September 11, 2012. R-2 showed electric charges for this period in the amount of \$1,139.96. R-2 also showed that the daily temperature average in September 2011 was 74 degrees as compared to 75 degrees for September 2012. Ms. Murphy testified that the accuracy of the meter readings was verified and that there was no way of knowing why usage increased but that there was no reason to believe that the billing was incorrect.

On cross-examination, Ms. Murphy was asked to review the graphs associated with R-2 and was asked if ACE altered the graphs. Ms. Murphy testified that the readings equally distribute usage to a per-day average and the graphs are an illustration of this per-day average, not the actual per-day usage. She stated that any change to the September 2011 graph would have no impact on prior years.

Robert Polk

Robert Polk is a Senior Associate Engineer for ACE and has been with the company for twenty-four years. In this position, he tests electric meters. He testified that the petitioners' meter was removed on October 22, 2012, and tested at the Delaware facility on December 12, 2012. He identified the AMI Device Management/EMT Device Inquiry (R-3) as the results of the test. The meter, #078356575, was tested on both a light load and a full load. The average accuracy for both loads was 100.128 per cent accurate. Mr. Polk testified that this accuracy meets the parameters established by Code. As a result, it was his opinion and the opinion of ACE that the meter did not malfunction. Once testing was completed, the meter was retired and a new one was installed at the petitioners' home.

On cross-examination, Mr. Polk testified that the meter was twenty-four years old; however, that this was not "old" by industry standards. He also testified that any natural event, such as lightening, would have resulted in permanent damage to the meter which would have been found when the meter was tested.

Ted Miller

The petitioner presented an analysis of the past five years of electric bills for the property. Given the high usage in September 2012, it is his opinion that there had to be something wrong with the meter or the electric. He testified that since the meter was removed for testing on October 22, 2012, the electric consumption has returned to normal levels. Mr. Miller was unable to present any evidence as to why the usage was higher than average in September 2012.

Based upon consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND as FACT** that meter #078356575 was removed from petitioners' home on October 22, 2012, and tested on December 12, 2012. I also **FIND as FACT** that the meter was tested on both a full and light load and was determined to be 100.128 per cent accurate and as a result, is found to be accurate.

LEGAL DISCUSSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

N.J.A.C. 14:5-4.3(a) states:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

N.J.A.C. 14:3-4.6(a) states:

Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided.

In this case, meter #078356575, which was removed from the petitioners' home, was tested and registered at 100.128 percent for both light and full load. As this is over 100 percent, and within two percent, the meter was accurate in accordance with the regulation. Petitioners could not provide any legally competent evidence to support the claim that the meter was inaccurate. I therefore **CONCLUDE** that the meter that was removed from petitioners' home on October 22, 2012, was accurate.

ORDER

All relief sought by petitioners is **DENIED** and the appeal filed by petitioners is **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, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 17, 2013

DATE

Date Received at Agency:

Date Mailed to Parties:

/lam

Linda M. Kassekert

LINDA M. KASSEKERT, ALJ

7/17/13

7/23/13

LIST OF WITNESSES

For petitioner:

Barbara Miller

Ted Miller

For respondent:

Marianne Murphy- Senior Analyst/Customer Relations, Pepco Holdings Inc

Robert Polk- Senior Associate Engineer, Atlantic City Electric

LIST OF EXHIBITS

For petitioner:

P-1 Petitioners' statement and analysis of billing dispute

For respondent:

R-1 Usage Statement 2011-2013

R-2 Atlantic City Electric bill- September 2012

R-3 AMI Device Management EMT Device Inquiry