



Agenda Date: 12/18/18
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

KYLE KUBS,)	ORDER ADOPTING INITIAL
Petitioner)	DECISION
)	
v.)	
)	
JERSEY CENTRAL POWER AND LIGHT CO.,)	DOCKET NO. EC17121255U
Respondent)	OAL DOCKET NO. PUC 04267-18

Parties of Record:

Kyle Kubs, petitioner, pro se
Joshua R. Eckert, Esq., on behalf of Respondent, Jersey Central Power and Light

BY THE BOARD:

The within matter is a billing dispute between Kyle Kubs ("Petitioner") and Jersey Central Power and Light Company ("JCP&L" or "Respondent" or "Company"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities ("Board") now **ADOPTS** the Initial Decision rendered on October 15, 2018, as follows.

PROCEDURAL HISTORY

On or about December 6, 2017, Kyle Kubs filed a petition with the Board of Public Utilities requesting a formal hearing to dispute bills from March 2016 through December 2017 for electric service rendered at his residence at Highview Terrace, Wharton, New Jersey ("the property"). Petitioner alleged that his bills reflected unreasonable and excessive charges and fees. Petitioner also stated that JCP&L turned off his electric service as his meter was damaged due to tampering. Petitioner denied any tampering and claimed that the meter was damaged by a JCP&L employee.

On or about January 11, 2018, JCP&L filed an answer to the petition, noting that Petitioner is a current JCP&L customer for electric service at the property under Account No. XXXXXXXXXXX968. JCP&L advised that prior to opening the current account in December 2017, Petitioner received electric service from the Company under Account No. XXXXXXXXXXX734. According to JCP&L, service was terminated on or around October 18, 2017, on Account No.

XXXXXXXXXX734 due to non-payment and a seal was placed on the meter to block service and prevent tampering. Subsequently, JCP&L contends that it discovered a cut meter seal, an inverted meter and lights on at the property in November 2017. Respondent argues that it complied with all applicable laws, regulations and standards when billing Petitioner, and that all fees and charges assessed on the Petitioner are in accordance with the terms and conditions set in JCP&L's Board approved tariff.

Subsequently, on March 22, 2018, this matter was transmitted to the Office of Administrative Law ("OAL") for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. This matter was assigned to Administrative Law Judge ("ALJ") Jude-Anthony Tiscornia.

On July 13, 2018, an evidentiary hearing was held before ALJ Tiscornia. Petitioner testified on his own behalf and introduced fourteen (14) bills, P-1 through P-14, into the record. These exhibits were moved into the record on the same date.¹ (See 1T57:6 to 1T58:14).² Dale Doth and Theresa Kelly Kehr testified on behalf of Respondent. During the July 13, 2018 hearing, Dale Doth introduced and identified Respondent's pre-marked exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11. (1T62:16-22; 1T63:8-16; 1T64:21 to 1T65:1; 1T66:15-19; 1T67:22-25; 1T71:4-8; 1T74:3-8; 1T80:9-13; 1T82:19-24; 1T92:2-19). During her testimony on the same date, Theresa Kelly Kehr also introduced and identified Respondent's exhibits 15, 16, 18, 19 and 20. (1T134:12-16; 1T136:10-14; 1T138:1-13; 1T139:24 to 1T140:3; 1T142:23 to 1T143:2).³

Post-hearing submissions were submitted and the record was closed on September 5, 2018. On October 15, 2018, Judge Tiscornia issued an Initial Decision, in favor of Respondent, denying the relief sought by Petitioner and dismissing the petition. No exceptions to ALJ Tiscornia's Initial Decision were received.

On November 19, 2018, the Board obtained a forty-five (45) day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

EVIDENTIARY HEARING

On July 13, 2018, the hearing on this billing dispute was heard before ALJ Tiscornia. (1T). During the hearing, Kyle Kubs testified on his own behalf about his billing statements from JCP&L, starting in January 2016 and continuing through December 2017. (1T8:14 to 1T53:24). When questioned by ALJ Tiscornia, Petitioner agreed that the amount owed on his account was \$1498.02. (1T39:5-22). Petitioner testified that he was not disputing any consumption charges assessed by JCP&L, which was approximately \$934 of the \$1498.02 balance. (1T39:9 to 1T53:24). He further testified that he was contesting the miscellaneous fees listed on his bills, including late fees, disconnection/reconnection charges and field collection charges. Ibid.

¹ While exhibits P-1 through P-14, which are JCP&L bills to the customer, were orally entered into evidence in chronological order on July 13, 2018 with no objection from JCP&L, only the first three (3) bills, P-1 to P-3, are listed in evidence as part of ALJ Tiscornia's Initial Decision. It appears that P-1, P-2, P-3 and P-14 were physically marked with their exhibit number, while the remainder were not. However, all fourteen (14) bills appear to have been provided to the Board in OAL returned file.

² 1T refers to the transcript of the July 13, 2018, hearing.

³ It does not appear that Respondent's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 15, 16, 18, 19 and 20 were made part of the record and they were not provided to the Board.

Petitioner testified that he did not owe money for these various fees as he never agreed to be bound by JCP&L's tariff. Ibid.

On cross-examination, Petitioner testified that JCP&L provided electric service at the property. (1T54:1-19). Petitioner further admitted that there were times that he did not pay his monthly bills in full. (1T55:8-20).

JCP&L presented the testimony of Dale Doth, an Advanced Business Analyst for Revenue Operations at JCP&L. (1T59:11 to 1T61:1). Mr. Doth testified that he has been working in the utility industry for thirty-two (32) years, and that he has worked for JCP&L for twenty-five (25) of those years in various capacities, including fleet engineering, meter reading and revenue operations. (1T60:18-23). He testified that he was familiar with Petitioner's situation as he reviewed the account, which included any calls made by the Petitioner to JCP&L, the disconnect notices and the tampering documentation. (1T61:14 to 1T62:12). Mr. Doth also testified regarding the Company's tariff provisions related to billing, disconnection and tampering. (1T66:15 to 1T100:18). He testified that Petitioner's electric service was disconnected for non-payment, and that subsequently, a JCP&L investigator found that the blocking sleeve was removed from the meter and that the meter was inverted. (1T66:5-7; 1T70:4-23; 1T75:11 to 1T79:29). As a result of the tampering, Mr. Doth testified that Petitioner was charged with disconnection/reconnection services related to tampering and field collection fees. (1T90:15 to 1T100:18).

On cross-examination, Mr. Doth testified about the field collection process and the documentation related to the tampering allegations. (1T102:13 to 1T103:6; 1T105:5-11; 1T118:10 to 1T127:7).

Next, Theresa Kelly Kehr testified on behalf of Respondent. She testified that she has been employed by JCP&L for thirty-six (36) years in customer service, customer support and collections, and that she has been at her current title of Customer Service Compliance Specialist for the last sixteen (16) years. (1T132:6-18). With regard to Petitioner's billing dispute, Ms. Kehr testified that she reviewed the file, including billing account statements, letters to the Petitioner and Petitioner's informal complaints to the Company regarding field collection fees. (1T133:16 to 1T37:19). Ms. Kehr testified that fourteen (14) field collection charges were assessed on Petitioner's account as JCP&L employees had to make fourteen (14) visits to the property to attempt collection for unpaid bills. (1T139:1-15). Ms. Kehr further testified that Petitioner's current balance on his account is \$1489.02. (1T144:15-17).

On October 15, 2018, Judge Tiscornia issued an Initial Decision, in favor of Respondent, denying the relief sought by Petitioner and dismissing the petition. In the initial decision, ALJ Tiscornia made specific findings of fact based upon his review of the testimony and exhibits: (1) Petitioner receives residential electric service from JCP&L; (2) Petitioner's account reflected a balance starting with his January 2016 bill; Petitioner made some payments on his account, but the payment never amounted to the full amount due, thus resulting in each new bill beginning with a balance unpaid from the prior month; (3) JCP&L made several field collection attempts to collect the unpaid balance; (4) JCP&L assessed field collection charges on Petitioner's account; (5) JCP&L turned off Petitioner's service after failed collection attempts; (6) JCP&L found evidence of tampering after service was shut off; and (7) electric service was eventually restored and Petitioner was assessed a reconnection fee. (ID at 2).

According to the Initial Decision, the parties agreed that the total outstanding balance on Petitioner's account is \$1498.02. Of this unpaid amount, \$934.02 is allocated to actual consumption, while the remaining balance of \$564 is related to field collection fees and disconnection/reconnection charges. Petitioner stipulated under oath that he is not disputing the consumption charges, but only disputes the \$564 in various fees. (ID at 3).

ALJ Tiscornia noted that JCP&L is required to have a tariff approved by the Board setting forth the various charges that can be assessed to customers, and that once approved by the Board, the tariff becomes binding on JCP&L and its customers. N.J.S.A. 48:2-21(a); N.J.A.C. 14:3-1.3. (ID at 3). Consequently, the ALJ found that JCP&L's tariff was binding on the Petitioner and that the Petitioner is required to pay all charges that have been properly assessed on his account. (ID at 4). Based on the testimony and exhibits, ALJ Tiscornia further found that JCP&L properly assessed the fourteen (14) separate field charges on Petitioner's account during the time period in question, as well as properly charged Petitioner the reconnection fee to have his service restored to the property. (ID at 4-5). ALJ Tiscornia concluded that Petitioner did not prove by a preponderance of the evidence that his JCP&L electric bills were incorrect or inaccurate, and thus, the outstanding bill of \$1498.02 remains the obligation of Petitioner to JCP&L. (ID at 5).

No exceptions to this Initial Decision were filed.

By Order dated November 19, 2018, the Board was given until January 14, 2019, to render a final agency decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Here, Petitioner argued that he is not responsible for the fees assessed on his account by JCP&L as he never agreed to be bound by JCP&L's tariff. However, Petitioner admitted that he received residential electric service at the property by JCP&L and admitted that there were several bills where he did not pay the full amounts due. As cited by ALJ Tiscornia, the Board notes that JCP&L, as a public utility, is required to have a Board-approved tariff, which sets forth detailed information regarding the rates and charges that can be assessed to customers. See N.J.S.A. 48:2-21(a); N.J.A.C. 14:3-1.3. Additionally, "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." In re Application of Saddle River, 71 N.J. 14, 29 (1976). As a customer receiving electric service from JCP&L, Petitioner was bound by the provisions of the tariff. Petitioner failed to provide any evidence that he was not subject to the terms of JCP&L's tariff; he also failed to present any compelling testimony or documentary evidence that the fees associated with the field collection attempts for non-payment or the meter disconnection/reconnection charges were inaccurate or inappropriate. Conversely, JCP&L provided extensive testimony regarding its tariff provisions, and explained in detail how these fees were assessed on Petitioner's account.

Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of ALJ Tiscornia to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear his burden of proof,

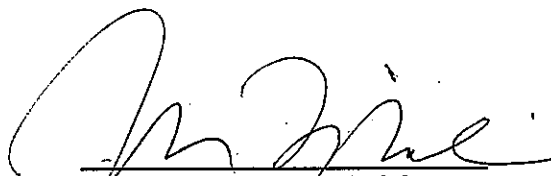
by a preponderance of the evidence, that he was improperly billed by JCP&L as there is nothing in the record demonstrating that various fees assessed on Petitioner's account by Respondent for field collection attempts and for the reconnection/disconnection charges at the subject property were inaccurate or inappropriate.

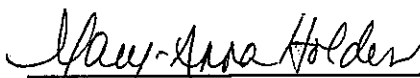
Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that that the Petition be **DISMISSED**.

This order shall be effective December 28, 2018.

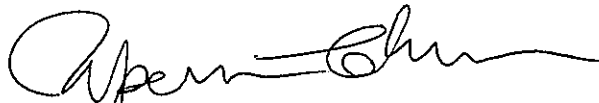
DATED: 12/18/18

BOARD OF PUBLIC UTILITIES
BY:

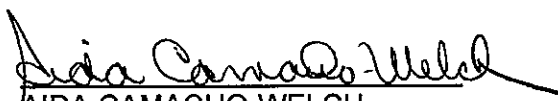

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

**In the Matter of Kyle Kubs, Petitioner v. Jersey Central Power and Light, Respondent –
Billing Dispute - Docket Nos. BPU EC17121255U and OAL PUC 04267-18**

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CASE MANAGEMENT

OCT 15 2018

BOARD OF PUBLIC UTILITIES
TRENTON, NJ

BOARD OF PUBLIC UTILITIES

OCT 15 2018

MAIL RECEIVED



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 04267-18

AGENCY DKT. NO. EC17121255U

KYLE KUBS,

Petitioner,

v.

JERSEY CENTRAL POWER AND LIGHT,

Respondent.

Kyle Kubs, petitioner, pro se

Joshua R. Eckert, Esq., Counsel for respondent, Jersey Central Power and Light

Record Closed: September 5, 2018

Decided: October 15, 2018

BEFORE JUDE-ANTHONY TISCORNIA, ALJ:

STATEMENT OF THE CASE

Petitioner, (Kyle Kubs), filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges and fees of respondent, Jersey Central Power and Light (JCP&L), for electric service provided to his residence at 6 Highview Terrace,

CMS
K. Gran
D. Thern
G. Hartst
J. Ford
R. Lamb
R. Matos
K. Flynn
D. Brantle
C. Gurkas
C. Vachier

Wharton, New Jersey. Kubs challenges the bills from March of 2016, through December of 2017.

PROCEDURAL HISTORY

Petitioner filed a complaint with the BPU which was received on December 6, 2017. This matter was transmitted by the BPU to the Office of Administrative Law (OAL), where it was filed on March 22, 2018, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on July 13, 2018. Final submissions were received on September 5, 2018, after which the record closed.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following to be the **FACTS** of this case:

The petitioner receives residential electric service from JCP&L. Petitioner's account reflected a balance forward starting with the January 2016, bill. (P-1, P-2, P-3) Petitioner did make payments during this time, but the payment never amounted to the full amount due and owing as reflected on the most recent bill; thus each new bill began with a beginning balance unpaid from the prior month's bill. Petitioner's bill of March 7, 2016, reflected a beginning balance of \$73.11. (P-3) Also included in the March bill was a "field collection charge" in the amount of \$25. A "field collection charge" is added to a bill whenever JCP&L has to send an employee into the field to collect an outstanding balance on a bill. JCP&L made several field collection attempts to petitioner's residence. After a number of failed collection attempts, the service at the residence was turned off. Soon thereafter, JCP&L found evidence of tampering with the electric meter located at the residence. Service was ultimately restored to the residence and reconnection fees were assessed.

AMOUNT IN DISPUTE

It was stipulated by the parties on the record that the total amount in dispute is \$1,498.02. Of this, \$934.02 is allocated to actual consumption charges while the remaining \$564 is reflective of various fees, including \$350 in field collection charges. Petitioner stipulated on the record that he does not dispute any of the \$934.02 in consumption charges, but rather he only disputes the \$564 in fees. With regard to the field collection charges, JCP&L argues that they sent an employee to the residence to attempt to collect on the account a total of 14 times at \$25 per attempt, for a total of \$350. Petitioner disputes this, claiming a representative only came to his home to make a collection on no more than two occasions.

Petitioner also disputes having to pay any fees related to the reconnection of service to his residence.

LEGAL ANALYSIS AND CONCLUSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to the matter 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 human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

In the case at bar, petitioner disputes the \$564 in fees associated with his electric bill. Petitioner argues that he never entered into any agreement or contract with the JCP&L to pay any such fees and he should therefore not be bound to pay them.

As a public utility, JCP&L is required to have a Board-approved Tariff setting forth the various charges that can be assessed to customers. N.J.S.A. 48:2-21(a); N.J.A.C. 14:3-1.3. Once approved by the Board, the terms of the Tariff are binding upon JCP&L

and its customers. Numerous courts in New Jersey have held that “[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.” See, e.g. *In re Application of Saddle River*, 71 N.J. at 29 (describing the difference between tariffs and contracts); see also *N.J. Bell Tele. Co. v. West Orange*, 188 N.J. Super. 455, 459 (App. Div. 1982) (holding that the utility was required to charge its customer at the tariffed rate even though the utility inadvertently contracted with the customer for a different rate).

I **FIND** the terms of JCP&L’s Tariff to be binding upon petitioner and thus, I **CONCLUDE** petitioner shall be required to pay all charges under the Company’s Tariff that have been properly assessed to his account.

The issue now becomes whether the contested charges have all been properly assessed in accordance with the terms of JCP&L’s Tariff. As noted above, the petitioner bears the burden of proof by a preponderance of competent, credible evidence that JCP&L’s billing (and specifically the disputed charges) was inaccurate or otherwise unreasonable. With regard to the \$350 in field collection charges, petitioner disputes JCP&L’s representation that an employee physically went to his residence a total of 14 times, testifying that he recalls only two instances. JCP&L presented both record evidence and testimony that they made fourteen separate collection visits to petitioner’s residence since February 2016. JCP&L presented testimony that employees making field collection visits enter the visit into a handheld device. This then automatically generates an entry in the Company’s system and assesses the \$25 charge referenced above. The report created by the Company’s system shows that fourteen different field collection charges were assessed in such a manner between February 4, 2016 and December 20, 2017. Therefore, I **FIND** that JCP&L properly assessed fourteen separate field collection charges (totaling \$350 in fees) to Petitioner’s account during this time-period.

Finally, petitioner disputes \$214 in fees associated with disconnecting and reconnecting his power. JCP&L first disconnected petitioner’s electric service for non-

payment of electric bills by blocking the electric meter located at petitioner's residence on October 18, 2017. This was achieved by placing "blocking sleeves" on the meter which blocks the electricity from flowing into the residence.

On November 2, 2017, a JCP&L employee was sent to petitioner's residence to investigate a report of an inverted meter. An inverted meter is a meter which has been altered in such a way that the meter cannot properly record the amount of electricity being used by the residence. The investigator found the blocking sleeves on petitioner's meter removed and petitioner's meter inverted. In response to these findings, JCP&L again blocked service to petitioner's meter. Between October 18, 2017 (the date service was initially disconnected) and November 2, 2017 (the date the tampering was discovered), JCP&L had not reconnected service at the petitioner's residence and had not authorized anyone to do so. The removal of the blocking sleeves from petitioner's meter and the inversion of the meter constituted tampering under the Company's Tariff.

On November 29, 2017, JCP&L once again had to disconnect service at Petitioner's residence, this time at the pole, when it discovered that power had been restored without Company authorization. Under JCP&L's Tariff, the amount of the reconnection fee that can be charged for a reconnection that is not made at the meter (as in this instance) is determined based on the cost to the company for reconnecting the service. Here, JCP&L charged petitioner \$214, which JCP&L represented was the standard fee charged to all customers for this type of reconnection. Petitioner presented no evidence contesting the amount of this fee. I **FIND** JCP&L appropriately charged Petitioner a \$214 reconnection fee to have his service reconnected.

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that his JCP&L electric utility bills and associated fees were incorrect or inaccurate for the time period in dispute. Accordingly, the outstanding amount of \$1,498.02 remains the responsibility of the petitioner.

ORDER

It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

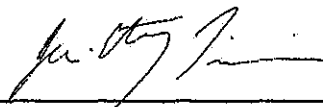
I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

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. 52:14B10.

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.

October 15, 2018

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

10/15/18

Date Mailed to Parties:

id

APPENDIX

LIST OF WITNESSES

For Petitioner:

Kyle Kubs

For Respondent:

Dale Doth

Theresa Kelly Kehr

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Electric bill dated January 8, 2006

P-2 Electric bill dated February 8, 2006

P-3 Electric bill dated March 7, 2006

For Respondent:

None referenced in I.D.