

Under cover dated November 26, 2018, Respondent filed an Answer, requesting that the Petition be dismissed and that Petitioner be ordered to pay the \$6,129.32 in disputed bills. The Answer also explained that ACE did pursue criminal theft of service charges against Petitioner, but denied Petitioner's payment of the fine was in lieu of payment. The Answer also explains that in March 2018 ACE offered Petitioner a twelve-month payment arrangement to address the balance, but that the arrangement was broken two months later.

On December 11, 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") Sarah G. Crowley.

This matter was heard during a single-day hearing on July 19, 2019. At the hearing Petitioner testified and also elicited testimony from her husband, Angel Pagan. Respondent called two witnesses: Kimberly Camp, the ACE revenue protection investigator who inspected Petitioner's meter on July 18, 2017; and Marianne Murphy, a senior regulatory assessor at ACE. Respondent also offered the following into evidence: (ACE-1) Camp's report from the investigation; (ACE-2) an account adjustment letter dated August 4, 2017; (ACE-3) the billing statement summary for the period of November 14, 2014 through January 16, 2019; (ACE-4) ACE's Tariff for electric services; (ACE-5) ACE billing statements for the period December 4, 2014 to January 15, 2019; (ACE-6) a meter test report; and (ACE-7) Petitioner's electric meter. The record closed on July 26, 2019.

On August 2, 2019, ALJ Crowley issued her Initial Decision ("ID") in favor of Respondent, denying the relief sought by Petitioner and dismissing the Petition. No exceptions were filed.

STATEMENT OF FACTS

On May 9, 2017, an ACE meter technician visited Petitioner's property to read her meter. (1T 54:8-23).¹ During this meter reading, the technician discovered two holes drilled in the meter cover. (1T 54:23-55). On May 18, Kimberly Camp, an ACE revenue protection investigator visited the property and knocked on the door, but no one answered. (1T 55:12-20). Ms. Camp was unable to access the meter directly as it was "surrounded by a chain-link fence" with locked gates. (ACE-1 at 2). On this occasion she did not see a wire or other foreign object protruding through the holes on the meter cover. (Id.)

Ms. Camp returned on July 18 and again found that the meter was inaccessible. (1T 56:7-9). However, she was able to see a wire protruding from the meter. (1T 56:4-6). Ms. Camp knocked on the door, and Petitioner's husband, Angel Pagan, answered. (1T 56:12-18) Ms. Camp informed him she needed access to the meter, and Mr. Pagan said "ok" and shut the door. (ACE-1 at 2) Approximately 7 minutes later, Mr. Pagan had not reemerged. (Id.) Ms. Camp backed up from the front door so that she could "keep a visual on the meter." (Id.) From her new vantage point, she observed another man approach the meter and removed the wire. (Id.; 1T 57:2-11).

Ms. Camp then contacted central dispatch and requested that local law enforcement be notified. (1T 58:1-4) After two officers arrived, the same man Camp watched removed the wire exited the residence. (ACE-1 at 2) He identified himself as David Phillips, Petitioner's brother-in-law.

¹ 1T refers to the July 19, 2019 hearing transcript. The transcript cover page erroneously states ALJ Elia A. Pelios presided over the hearing, instead of ALJ Sarah G. Crowley.

(Id.). He denied having any knowledge of a wire on the meter. (Id.) Ms. Camp then exchanged the meter and installed a lock on the meter. (1T 59:9-11).

On or about August 4, 2017, ACE sent to Petitioner a letter explaining that it had performed an investigation on her meter, and determined that her account would be debited a total of \$5,762.06. (ACE-2). This amount represents a \$5,204.87 adjustment to the account for underbilling between March 1, 2015 and July 18, 2017, plus a security investigation fee of \$557.19. (1T 29:10-13; ACE-2. See also ACE-3 and ACE-5).

During her testimony, Petitioner denied having any knowledge that her meter had been compromised, and denied that Mr. Phillips would have been able to tamper with the meter during Camp's July 18 visit as he was ill with stage four cancer. (1T 42:9-21). Her husband also testified about the events of July 18, 2017, but also denied he knew anything about the meter being tampered with. (1T 48:18-49:10).

Respondent elicited testimony from Kimberly Camp. Ms. Camp testified that she has been an employee of ACE for 38 years, and has worked as an investigator for ACE's Revenue Protection Department for eight years. (1T 52:18-21; 53:24-54:3). She testified she has completed approximately 3300 investigations. (1T 54:4-7). She testified about how when a wire was inserted into the holes drilled in Petitioner's meter which prevents the meter's mechanical parts from accurately measuring electricity usage. (1T 72:12-74:6). Ms. Camp also provided detailed testimony about the methodology used by the Revenue Protection Department to calculate how much is owed after under billing due to meter tampering is discovered. (76:24-78:2).

The final witness was Marianne Murphy, a Senior Regulatory Analysis employed by ACE's affiliate, Pepco Holdings; she has been in this role for eight years. (92:22-93:4). She testified about her review of Petitioner's bills during the March 2015 to July 2017 period. (1T 97:12-97:12). She also provided testimony her methodology for doing so was consistent with company policy, as well as ACE's Tariff. (1T 97:13-99:3. See also ACE-4 at 2).

DISCUSSION AND FINDINGS

Upon her review of the testimony and exhibits entered into evidence at the July 19, 2019 hearing, ALJ Crowley found the following facts: (1) there was evidence of meter tampering, and no explanation could be provided by Petitioner or Mr. Phillips as to why; (2) Petitioner's meter did not provide accurate readings between March 2015 and June 2017 due to tampering; and (3) when Petitioner's meter was replaced in 2017, the amount of electricity usage substantially increased. (ID at 8-9).

ALJ Crowley described Petitioner's burden in bringing this matter is to establish by a preponderance of the evidence that the billings disputed by Petitioner are indeed inaccurate. (ID at 5). She concluded Petitioner had not produced any evidence to show her balance owed is not proper, nor did she present evidence to dispel the allegation that her meter had been tampered with. (ID at 5). She also found that the testimonies of Petitioner and her husband were not credible. (ID at 4). Conversely, Judge Crowley found Respondent produced evidence to show the meter had been tampered with, and that ACE's calculations to determine the amount owed was proper. (ID at 5). Judge Crowley also found the testimony of Ms. Camp and Ms. Murphy to be "sincere and credible," and to accept their testimony as fact. (ID at 4). She

concluded that Petitioner had not proved by a preponderance of the evidence that her bills were improper, and that ACE conducted its subsequent billing consistent with its Tariff. (ID at 9).

After review of the entire record, the Board **HEREBY ADOPTS** the Initial Decision of ALJ Crowley. The Board **FINDS** that ALJ Crowley's conclusion that Petitioner failed to prove her claim by a preponderance of the evidence is correct. In customer billing disputes before the Board, petitioners bear the burden of proof by a preponderance of evidence of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), cert. denied, 31 N.J. 75 (1959).

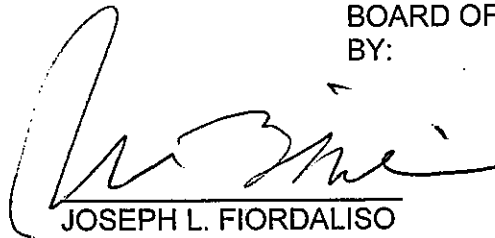
In this case, Petitioner failed to present evidence the estimated billings were not proper or that the meter at issue was not tampered with. Petitioner's testimony was found to not be credible by ALJ Crowley, who had opportunity to observe the witnesses and assess their credibility. Further, Respondent provided preponderate evidence that Petitioner's meter had been tampered with, and established the method used to calculate Petitioner's bills was proper. Consequently, ALJ Crowley's conclusion that Petitioner failed to prove by a preponderance of the evidence that her electric meter was inaccurate is **HEREBY ADOPTED** by the Board.

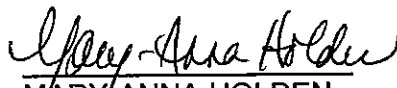
In conclusion, after careful review and consideration of the entire record, the Board **HEREBY ADOPTS** the Initial Decision and **ORDERS** that the petition in this matter be **DISMISSED**.

The effective date of this Order is October 17, 2019.

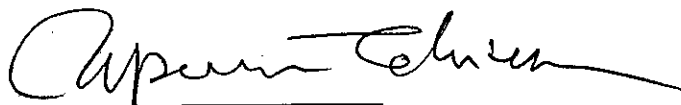
DATED: 10/7/19

BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

MARGARET PAGAN

V.

ATLANTIC CITY ELECTRIC COMPANY

**BPU DOCKET NO. EC18050587U
OAL DOCKET NO. PUC 18174-18**

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CASE MANAGEMENT

AUG 02 2019

BOARD OF PUBLIC UTILITIES
TRENTON, NJ



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BOARD OF PUBLIC UTILITIES

AUG 02 2019

MAIL RECEIVED

INITIAL DECISION

OAL DKT. NO. PUC 18174-18

AGENCY DKT. NO. EC18050587U

MARGARET PAGAN,

Petitioner,

v.

ATLANTIC CITY ELECTRIC COMPANY,

Respondent.

CMS
K. GORHAM
D. THOMAS
DIAG
E. HARTSFIELD
J. FORD
R. LAMBERT
R. MAYTAS
K. FLYNN
C. VACHIER
S. PATRUADE

Margaret Pagan, petitioner, pro se

Philip J. Passante, Assistant General Counsel, for respondent Atlantic City Electric Company

Record Closed: July 26, 2019

Decided: August 2, 2019

BEFORE SARAH G. CROWLEY, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Margaret Pagan (petitioner) filed a petition with the Board of Public Utilities (BPU) on May 29, 2018, challenging a bill received from the Atlantic City Electric Company (ACE) in March 2017. The charges were estimated based on an allegation of meter tampering between March 2015 and July 2017. The matter was transmitted to the Office of Administrative Law (OAL) where it was filed on December 20, 2018, pursuant

to N.J.S.A. 52:14B-1 to -15, N.J.S.A. 52:14F -1 to -13. On July 19, 2019, a hearing was conducted, and the record remained open for seven days for receipt of petitioner's post-hearing submission. No submissions were received, and the record closed on July 26, 2019.

FACTUAL DISCUSSION AND FINDINGS

TESTIMONY

Margaret Pagan was a tenant at the 210 Rt. 73, House B, in Voorhees, New Jersey. She and her husband resided in the apartment November of 2014 until December of 2018. She testified that she had trouble with Atlantic City Electric Company from the time she moved in. There was a period of time that she received no bills and had to continually call. She testified that the meter was old, and she had requested that someone come out and replace it. She also felt that the bills were too high and requested that they check the meter. She testified that at one point she found out that the warehouse next door was hooked up to their meter. Her brother-in-law, who lived in the attic of their apartment worked for the warehouse company. When they mentioned it to the landlord who owned the warehouse, he said something like "well he is family." It is unclear what this meant, but eventually the warehouse was disconnected from their bill. She testified that her brother-in-law knew how to change the meter and take the warehouse off.

She testified that their bills were always high, and that after they came out and installed a new meter, the bills went down. She testified that when they came out to read the meter in July of 2017, she was not home, but her husband and her brother-in-law were there. Her brother-in-law was not well and has stage four cancer. He was thrown out of the home he was in and that is why he was living in their attic. The electric company filed criminal charges against her and her brother-in-law. She went to court about the criminal charges, and pled guilty because she thought it would take care of everything. She said the ACE worker was annoyed when the judge said he would not order restitution due to the alleged tampering. She thought this court would have a copy of the transcript. She was given a week to obtain this transcript but failed to

submit anything. Her brother-in-law also pled guilty to criminal mischief charge. She maintains that they did not tamper with the meter.

Angel Pagan is the husband of Margaret Pagan and resided in the home in question. He was home when Ms. Camp came to read the meter in July 2017. He testified that someone came to the door and said they were there to read the meter. He suffers from insomnia, so after he answered the door, he claims to have fell asleep when she came back to the door. She advised him that she saw someone, go and remove something from the meter, and she was calling the police. I did not know what she was talking about.

Kimberly Camp is a Revenue Protection Investigator with ACE and investigates allegations of meter fraud and theft of electricity. She has worked for ACE for thirty-eight years. She conducted the investigation of 210 Rt. 73, House B in Voorhees, New Jersey. She testified that the meter reader was there on May 9, 2017, and observed a hole drilled in the meter cover. Ms. Camp went out to the site on July 18, 2017 and knocked on the door and advised that she needed to see the meter. She then observed a gentleman go into the back and remove a wire from the meter. She then had to go back to the door, and when they answered the door, she advised that she was calling the police as she observed the gentleman remove the wire from the meter. She went to the police department and signed a complaint for theft of services. The meter was retrieved and had a hole drilled in it. She explained how a wire is placed through the hole to stop the meter and reduce the usage recorded. She appeared in municipal court where Mr. Phillips plead guilty to criminal mischief and Ms. Pagan plead guilty to other charges. There was no restitution in the municipal court. She is aware that they do not order payment to the electric company and they need to file separately in civil court, or in this court.

Ms. Camp discussed how they determine when the tampering commenced as well as how they calculate the amount due. She reviewed the past bills and identified the date when the consumption levels dropped. They also compare them to the same months in prior years. Although some of the months are not higher, it is the winter

months where the changes are significant. The meter was tested and found to be accurate.

Ms. Camp reviewed the bills from past years to try to pinpoint when the theft of electricity began. She identified a chart marked as R-1 and pointed out where she observed a significant drop in the consumption. There were a few months where there was not a significant drop, but for the most the usage was lower and significantly lower in many of the months. Right after they changed the meter, the usage went down, but eventually went back up and was significantly higher than the years where the alleged tampering was occurring. It is common for people to significantly reduce their usage right after tampering is discovered. They calculated the amount due as a result of the under-billing based on the bills from the year preceding the tampering.

Marianne Murphy is employed by Pepco Holdings, an affiliate of ACE. She is a Senior Regulatory Analyst. Prior to her current position, she was an analyst for the billing department. She conducted an analysis of the bills in question then prepared a bill to the customer advising them that an adjustment was being made based on the tampering. She identified the standard letter which was sent to the petitioner which advises that the adjustment is being made to bills from March of 2015 to July of 2017.

Ms. Murphy testified that the policy of the company is to determine usage for the year immediately preceding the tampering and use this as the basis for its calculation. This policy is consistent with the Tariff which allows them to estimate from available information where tampering results in an incorrect measurement of the services supplied. The Tariff was identified and moved into evidence. She testified that this methodology complies with the company policy and the language of the Tariff. Moreover, it is a fair estimate of the undercharges for the years in question.

Based on the testimony presented and the documentary evidence submitted and having had an opportunity to observe the witnesses and to assess their credibility, I **FIND** the testimony of Ms. Camp and Ms. Murphy was sincere and credible and find their testimony as **FACT**. I further **FIND** that the testimony of Margaret Pagan and Angel Pagan was not credible and that the meter in question had been tampered with. I

also **FIND** as **FACT** that the meter had been tampered with from March 2015 to July of 2017.

LEGAL ANALYSIS AND CONCLUSION

The burden of establishing that the charges tendered to the petitioners are not proper, such that they are owed a refund, rests with the petitioners. They must establish their contention that the billings are not proper by a preponderance of the credible evidence. In this case, the petitioner has not produced any evidence that the estimated billings are not proper. Moreover, she has not produced any evidence to indicate that the meter had not been tampered. The respondent demonstrated that the meter in question had been tampered with and that the proper method of calculations used to determine the amount due and owing from the respondent for the years in question.

N.J.A.C. 14:3-4.6 provides:

(a) 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, and 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, except under (d) below.

(b) If the date when the meter first became inaccurate is known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was in error at the time of the test, adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the total charges for metered service that accrued during the entire period that the meter was in error; and

3. The amount of the adjustment shall be the percentage determined under (b) (1) above, applied to the charges determined under (b) (2) above.

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was inaccurate at the time of the test adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the applicable time period as follows:

i. Determine the period of inaccuracy; that is, the period between the test that found the meter inaccuracy and the earlier of the events at (c)(2)(i)(1) or (2) below (Note: The period of inaccuracy may be longer than the time the meter has served the existing customer):

(1) The most recent previous test of the meter; or

(2) The date upon which the meter was taken out of service at the customer's premises;

ii. Perform the following calculation:

(1) If the period of inaccuracy determined under (c)(2)(i) is shorter than the maximum permitted time between meter tests, as determined under N.J.A.C. 14:5-3.2, 14:6-4.2, or 14:9-4.1(b), divide the period of inaccuracy in half; or

(2) If the period of inaccuracy is longer than the maximum permitted time between meter tests, divide the permitted maximum time between meter tests in half; then add the difference between the maximum permitted time between meter tests and the period of inaccuracy;

iii. If the time determined under (c)(2)(ii) above is longer than the time the meter has served the existing customer, the applicable time period is the time the meter has served the existing customer;

iv. If the time determined under (c)(2)(ii) above is shorter than the time the meter has served the existing customer, the applicable time period is the time determined under (c)(2)(ii) above;

3. Determine the total charges that accrued during the applicable time period determined under (c) (2) above; and

4. The amount of the adjustment shall be the percentage determined under (c) (1) above, applied to the charges determined under (c) (3) above.

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

1. The meter was tampered with, or other theft of the utility service has been proven;

2. The meter failed to register at all; or

3. The circumstances are such that the customer should reasonably have known that the bill did not reflect the actual usage.

(e) If a meter is found to be registering less than 100 percent of the service provided because of theft or tampering under (d)(1) above, the utility may require immediate payment of the amount the customer was undercharged.

(f) In cases of a charge to a customer's account under (d)(2) or (3) above, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was undercharged.

N.J.A.C. 14:3-7.2(e) provides:

Rules concerning estimated bills for all customers are as follows:

1. Utility companies shall maintain a regular meter reading schedule and make a reasonable effort to read all meters;

2. Utility companies, upon request, shall make available to all customers a postage-paid business reply card on which the customer may mark the meter reading as follows:

- i. The business reply card shall have appropriate explanation. The utility shall permit the customer to telephone the meter reading to the utility. The customer reading is to be used in lieu of an estimated reading, provided the reading is received in time for billing;
3. When a utility estimates an account for four consecutive billing periods (monthly accounts), or two consecutive billing periods (bimonthly and quarterly accounts), the utility shall mail a notice marked "Important Notice" to the customer on the fifth and seventh months, respectively, explaining that a meter reading must be obtained and said notice shall explain the penalty for failure to complete an actual meter reading. After all reasonable means to obtain a meter reading have been exhausted, including, but not limited to, offering to schedule meter readings for evenings and on weekends, the utility may discontinue service provided at least eight months have passed since the last meter reading was obtained, the Board has been so notified and the customer has been properly notified by prior mailing. If service is discontinued and subsequently restored, the utility may charge a reconnection charge equal to the reconnection charge for restoring service after discontinuance for nonpayment;
4. Utility companies shall submit to the Board of Public Utilities a statement detailing their estimating procedures;
5. If low estimates result in a customer receiving an actual bill that is at least 25 percent greater than the prior estimated bill, the utility shall allow the customer to amortize the excess amount. The amortization will be in equal installments over a period of time equal to the period when no actual reading was taken by the customer or the utility; and.
6. Annually, the utility shall notify all customers of their rights to amortize as set forth in (e) (5) above.

In this case, from March of 2015 to July of 2017, the meter in question had been tampered with and was not providing an accurate reading. The company removed the meter in question and thereafter, the meter reading substantially increased. There was evidence of meter tampering at the residence and no explanation was offered by the homeowner as to why there was a hole drilled in his meter, and why Mr. Phillips removed something from the meter when they came out to read the meter. Moreover,

Mr. Phillips and Ms. Pagan plead guilty in municipal court to charges arising out the theft of services charges that were filed against them.

I **CONCLUDE** that petitioner has not proved by a preponderance of the credible evidence that the estimated bills were improper or that the meter in question was not tampered with. I further **CONCLUDE** that the estimates provided by ACE which were based on subsequent bills, were consistent with the policy of the company as well as the relevant Tariff.

ORDER

It is therefore **ORDERED** that the petition appealing the charges in his matter be and is hereby **DISMISSED**, and petitioner is ordered to pay the \$6,129.32 in disputed bills.

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.



August 2, 2019 _____

DATE

SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC/cb

APPENDIX

WITNESSES

For petitioner:

Margaret Pagan
Angel Pagan

For respondent:

Kimberly Camp
Marianne Murphy

EXHIBITS

For petitioner:

None

For respondent:

R-1	Investigation Report (ACE-1)
R-2	Account Adjustment (ACE-2)
R-3	Billing Summary (ACE-3)
R-4	Tariff (ACE-4)
R-5	Bills (ACE-5)
R-6	Accuracy Test on Meter (ACE-6)