



Agenda Date: 5/1/12

Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

CHELMAR LLC,
Petitioner

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,
Respondent

) ORDER ADOPTING
) INITIAL DECISION
)
)
)
) BPU DOCKET NO. EC11070463U
) OAL DOCKET NO. PUC11697-11

Parties of Record:

Andrew Rich, Principal, on behalf of Petitioner, Chelmar LLC, *pro se*
Michael J. Connolly, Esq., Morgan, Lewis & Bockius, LLP, on behalf of Respondent, Jersey Central Power and Light Company

BY THE BOARD:

On July 26, 2011, Chelmar LLC ("Petitioner") filed a petition with the Board of Public Utilities ("Board") disputing charges for electric service provided by Jersey Central Power & Light Company ("Respondent").¹ The matter was transmitted the Office of Administrative Law ("OAL") as a contested case hearing. Following an evidentiary hearing, Administrative Law Judge ("ALJ") Kimberly A. Moss issued an Initial Decision ordering the petition be dismissed. Petitioner filed exceptions to the Initial Decision and Respondent filed a reply to Petitioner's exceptions. Having reviewed the record, the Board, for the reasons stated below, now adopts the Initial Decision in its entirety and incorporates it into this final decision and dismisses the petition.

PROCEDURAL HISTORY

On September 12, 2011, Respondent filed an answer with the Board. On September 19, 2011, the matter was transmitted to the OAL as a contested case and was assigned to ALJ Moss. A telephonic pre-hearing conference was held on October 18, 2011. On January 5, 2012, a hearing was held before ALJ Moss, after which the record was closed. On January 19, 2012,

¹The record indicates that Petitioner initially filed a complaint with the Superior Court of New Jersey, Special Civil Part, Morris County, Docket No. SC707-11. Although no other court documents were submitted, the Petitioner represents the complaint was dismissed based on improper venue.

ALJ Moss issued an Initial Decision ordering Petitioner's petition be dismissed. In a letter dated February 3, 2012, Petitioner mailed a letter to Respondent describing Petitioner's desire to "send our exceptions."² Respondent filed a reply to exceptions on February 14, 2012. On February 10, and April 11, 2012, the Board issued proposed orders extending the time limit to issue a final decision until June 4, 2012, which was approved by Acting Director and Chief ALJ Laura Sanders.

Petitioner is a holding company in Florham Park, New Jersey where it has been an electric account customer with Respondent since December 2008.³ The company is owned by two partners, one of whom is Andrew Rich. Rich testified that Petitioner occupies approximately 2,000 square feet of office space and has two employees. Prior to taking possession of the space, Rich had been told, but did not verify, that the monthly electric bills would average \$200. However, once Petitioner took possession, the electric bills averaged \$500.⁴ Rich suspected something was wrong and complained to Respondent.

In response to that complaint, Respondent replaced Petitioner's meter on November 28, 2010 after which, Petitioner's monthly electric bill declined. Based on this reduction, Petitioner concluded that it had been previously overcharged. Respondent replaced Petitioner's meter again on April 24, 2011 and on June 27, 2011, however, Petitioner does not dispute the accuracy of the billings after November 12, 2010.

Each time Respondent removed Petitioner's meter, it was sent for testing at Respondent's Bethel, Pennsylvania facility and in all three instances, found to be operating within acceptable levels. To illustrate, the test results revealed that the meter removed on November 28, 2010, was operating at 99.92% accuracy; the meter removed on April 24, 2011 was operating at 99.88% accuracy; and the meter removed on June 27, 2011 was operating at 99.92% accuracy. At the January 5, 2012 hearing, Petitioner did not object to or refute the validity of those test results. However, Petitioner argued that based on its calculations, which compared his meter use prior and subsequent to the November 28, 2010 meter change, Petitioner was owed \$4,417.44. Petitioner also maintained it had never been told that there was a second test which could be performed on the meters.

DISCUSSION AND FINDINGS

Petitioners bear the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). This petition raises the issue whether Petitioner was overcharged for electricity due to a faulty meter. Based on the competent evidence in the record, ALJ Moss correctly concluded that Petitioner failed to meet his burden of showing that the meter was malfunctioning and that his electricity bill was incorrect. The Board HEREBY FINDS that the findings and conclusions of ALJ Moss are reasonable.

²The record does not show that Petitioner filed exceptions with the Board, however, Respondent filed its response to Petitioner's exceptions with the Board and included Petitioner's exception letter as an attachment.

³Although Petitioner's bill is under Chelmar, LLC, Andrew Rich, the Petitioner's partner and pro se representative, testified the company is a limited liability partnership.

⁴A detailed statement of Petitioner's account shows its monthly bills were between \$276 and \$542, with an approximate average bill of \$407.26, from February 18, 2010 to November 28, 2010.

In its exceptions, Petitioner appears to argue that: (1) a second test should have been performed on the meter; (2) that the post-November 28, 2010 drop in Petitioner's energy usage proves there was a problem with the first meter; (3) Respondent made an admission that there was a problem with the meter removed on November 28, 2010; and (4) Respondent's pre-hearing settlement offers were proof of a faulty meter.

Pursuant to N.J.A.C. 1:1-18.4(b), exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge; and
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon.

Here, Petitioner's exceptions indicate general disagreement with the decision but fails to delineate the specific findings of fact, conclusions of law or dispositions with which it takes issue, as required by N.J.A.C. 1:1-18.4(b). The Board HEREBY FINDS that Petitioner has failed to comply with N.J.A.C. 1:1-18.4(b) and accordingly, rejects Petitioner's exceptions as being without merit. However, the Board adds the following brief comments.

N.J.A.C. 14:3-4.5, which governs meter tests at a customer's request, does not provide for a second subsequent test of a meter removed at a customer's requests which is "above and beyond," the test performed on the meters removed from Petitioner's place of business. Instead, "the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party." N.J.A.C. 14:3-4.5(c) (emphasis added). The drop in kilowatt hours used by Petitioner after removal of the meter on November 28, 2010 does not, by itself, prove the meter was faulty. In this case, correlation does not equal causation. See Schulman v. Male, 70 N.J. Super. 234, 240 (App. Div. 1961) (refusing to adopt the false logic of "Post hoc, ergo propter hoc"). ALJ Moss's Initial Decision correctly noted that Petitioner did not provide legally competent evidence in support of its claim. Moreover, the record does not support Petitioner's claim that Respondent has in any way admitted there was a problem with the meters removed from Petitioner's place of business. Rather, the record suggests Petitioner repeatedly misinterpreted Respondent's comprehension of his argument as agreement with it.

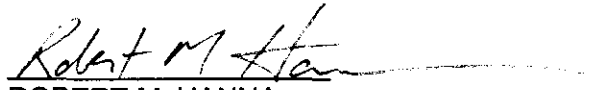
Last, the Board will not consider Respondent's offer of settlement as proof of its liability. The judiciary has considered evidence as not relevant to the question of Respondent's liability and is contrary to public policy. See Wyatt by Caldwell v. Wyatt, 217 N.J. Super. 580, 586 (App. Div. 1987).

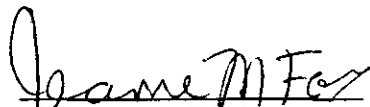
Based on competent evidence in the record, Petitioner's meter was removed on three separate occasions and tested for accuracy, pursuant to N.J.A.C. 14:5-4.3. The meter test results indicated no need to adjust Petitioner's charges under N.J.A.C. 14:3-4.6. The Board gives great weight to tests that measure meters' accuracy. See Kohli v. Jesery Central Power and Light Co., Dkt. No. EC10070506U, final decision, (May 16, 2011). As a result, the findings contained

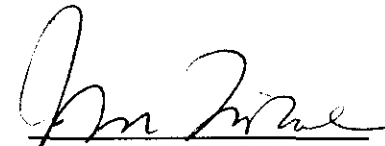
in the Initial Decision are supported by "sufficient credible evidence in the record." In re Petition of Hackensack Water Co. 249 N.J. Super. 164, 174 (App. Div. 1991). Accordingly, based upon the foregoing the Board HEREBY FINDS that the findings of fact and conclusions of law as set out by ALJ Moss are reasonable and fully supported by the record. Therefore, the Initial Decision is HEREBY ADOPTED in its entirety as if it were attached hereto and made a part hereof and ORDERS that the petition be dismissed.

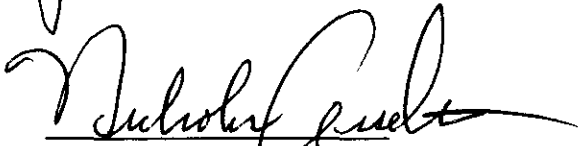
DATED: 5/1/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

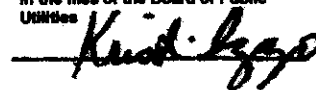

NICHOLAS ASSELTA
COMMISSIONER


MARYANNA HOLDEN
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



CHELMAR LLC

V.

JERSEY CENTRAL POWER & LIGHT COMPANY

BPU DOCKET NO. EC11070463

OAL DOCKET NO. PUC11697-11

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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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INITIAL DECISION

OAL DKT. NO. PUC 11697-11N

AGENCY DKT. NO. EC11070463U

CHELMAR LLC,

Petitioner,

v.

**JERSEY CENTRAL POWER
& LIGHT COMPANY,**

Respondent.

Andrew Rich, pro se

**Michael J. Connelly, Esq., for respondent, Jersey Central Power & Light Company
(Morgan Lewis & Bockius, attorneys)**

Record Closed: January 5, 2012

Decided: January 19, 2012

BEFORE KIMBERLY A. MOSS, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Chelmar LLC (Chelmar or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Jersey Central Power & Light Company (JCPL) for electric service provided to 29 Columbia Turnpike, Florham Park, New Jersey.

On September 28, 2011, this matter was transmitted to the Office of Administrative Law (OAL) for 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 -13. A telephone prehearing was conducted on October 18, 2011, at which time a hearing was scheduled for January 5, 2012. The hearing was held on January 5, 2012, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

As the following are undisputed, I **FIND** it to be the **FACTS** of this case:

Chelmar is an electric customer of JCPL. Chelmar is located at 29 Columbia Parkway, Florham Park, New Jersey. Electric meters were removed from Chelmar on November 28, 2010, April 24, 2011, and June 27, 2011. The bills after November 12, 2010, are not in dispute. Paul Pagano is an expert in metering service.

Testimony

Andrew Rich

Chelmar LLC is a holding company for Genesis Graphics. Chelmar is a limited partnership owned by Andrew Rich (Rich) and his ex-wife. Chelmar is located on a 2000-foot office space. There are three businesses at that location, Next Horizon, a marketing company; Chelmar; and Genesis Graphics, which was purchased by Inner Workings. Initially Genesis Graphics had six employees. It currently has two employees. There are two companies on the third floor of the building, one of which is owned by Chelmar. These companies do not share a common wall. Rich has been attempting to sell the property for the past twelve months. Chelmar moved to 29 Columbia Turnpike in December 2008. Rich began noticing that the electric bill was approximately \$500 per month. He believed that Chelmar was being overbilled. He contacted JCPL to discuss the billing on many occasions. He requested that the meter be tested.

On November 12, 2010, the meter was changed. The bill after the meter change stated that Chelmar used 762 kilowatt hours (KWH) of electricity that month. The second month after the meter was changed the bill showed that Chelmar used 713 KWH of electricity. In the eighteen months prior to the meter being changed, the bills showed a monthly average of 2016 KWH of electricity used by Chelmar. Rich contacted JCPL to discuss this discrepancy. Stan Dieterly (Dieterly), a supervisor at JCPL spoke to Rich. Dieterly told Rich that he wanted the recently installed meter tested. Rich was told that the second meter test came back good. Dieterly told him not to pay the bill.

Rich states that the average monthly KWH of electricity used from May 20, 2009, thru November 12, 2010, was 2216.56. The average monthly KWH of electricity used from December 16, 2010, thru April 14, 2011, was 742.5. Rich notes that the meter tests were done by JCPL.

Ann L. Miller

Ann L. Miller (Miller) is the manager of revenue operations for JCPL. In her position she has access to all customer accounts. She became aware of the Chelmar account in July 2011. She was aware that there were two meter tests done and that there was lower usage after the second meter was installed.

JCPL's statement of account for Chelmar reveals that meter number G28850115 was removed on November 28, 2010, to be tested, and meter number G17922520 was installed on November 29, 2010. Miller explained that although the statement of account states that meter number G17922520 was installed the day after meter number G28850115 was removed, in actuality meter number G17922520 was installed the same day as meter number G20050115 was removed. A new meter is installed immediately after a meter is removed. Then meter number G17922520 was removed on April 24, 2011, to be tested. Meter number G28158099 was installed at that time. Meter number G28158099 was later removed to be tested on June 27, 2011. Subsequently, meter number G28460586 was installed at that time.

When a meter is tested it is taken to the test facility. The meter test in November 2010 was done at Chelmar's request. The meter test in April 2011 was done at the request of a JCPL supervisor to confirm accurate usage. The meter test in June 2011 was also done at Chelmar's request.

Chelmar's account was scheduled for discontinuance seven times between December 2009 and July 2011. Chelmar presently has a balance of \$1663.54. Miller did not find any notes stating that Chelmar was told to stop paying the balance.

JCPL's billing is based on meter readings in accordance with its tariff. The tariff is a document submitted to the BPU which details how service is supplied and how customers will pay for service.

When comparing usage it is important to compare usage at the same time of year. The temperature plays a factor in usage. There are other factors that affect usage. Usage is high in the winter and summer, if air conditioning is used.

Paul Pagano

Paul Pagano is the manager of metering services for JCPL. He worked as a meter reader, meter collector, and meter tester. He was a first class meter tester before becoming supervisor of metering services. He developed a training manual for testing meters. He has trained in all types of metering and has access to meter test records.

There are two types of meter tests. One type is a BPU-witnessed meter test. When a customer requests a BPU meter test there is a charge and the test is done in Morristown and witnessed by a representative of the BPU. In non-BPU-witnessed meter tests the meter is removed and sent to Bethel, Pennsylvania to be tested.

The standard for whether a meter is operating accurately is that it is not operating two percent over or under one hundred percent. JCPL's standard for a meter to be operating accurately is that it is operating between 99.5 percent and 100.3 percent. The meter test done on May 4, 2011, on meter number G17922520 showed that the meter

was operating at 99.88 percent. The meter test done on December 1, 2010, on meter number G28850115 showed that the meter was operating at 99.92 percent. The meter test done on September 28, 2011, on meter number G28158099 showed that the meter was operating at 99.92 percent. The meter test done on May 19, 2011, on meter number G28460586 showed that the meter operated at 100.04 percent. All of the meter tests were done in Bethel, Pennsylvania. The KWH measured on the meters was accurate.

JCPL does not determine how its customers use their equipment. If a business changes, its billing will change.

The BPU requires JCPL to perform sample tests on meters. JCPL tests a number of each type of meter. If a type of meter fails, a second test is done. If that type of meter fails the second test, then all of that particular type of meter is removed from service. 99.9 percent of the meters are accurate. The percent that fail the meter test usually slow down.

Having heard the testimony and witnesses **FIND** the following additional **FACTS**:

Rich contacted JCPL because he believed that he was being overcharged. In November 2010, meter number G28850115 was removed from Chelmar and meter number G17922520 was installed. Meter number G28850115 was tested on December 1, 2010. The test result showed that the meter was operating at 99.92 percent. Once the new meter was installed, Rich noticed a decrease in the KWH usage. He again contacted JCPL regarding this discrepancy. JCPL removed meter number G17922520 and installed meter number G28158099 in April 2011. Meter number G17922520 was tested on May 19, 2011. The test results showed that the meter was operating at 99.88 percent. In June 2011 JCPL removed meter number G28518099 and installed meter number G28406586. Meter number G28158099 was tested on September 28, 2011. The test result showed that the meter was operating at 99.92 percent. All of the meters were tested in Bethel, Pennsylvania. None of the meter tests were BPU-witnessed tests.

After meter number G28850115 was installed, there was a decrease in Chelmar's KWH usage. Temperature can be a reason for a change in KWH usage. A change in how a business operates can also cause a decrease in KWH usage.

LEGAL ANALYSIS AND CONCLUSION

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, except under (d) below.

In this case the meters were registering at 99.92 percent, 99.88 percent, and 99.92 percent. Being not more than two percent over or under 100 percent, the meters were accurate in accordance with the regulation. Chelmar provided no legally competent evidence to support the claim that the meter was inaccurate. The decrease in KWH usage could be accounted for by temperature and change in the operation of the company, among other things. I therefore **CONCLUDE** that the meters that were removed from Chelmar in November 2010, April 2011, and June 2011 were accurate.

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. 52:14B-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.

January 19, 2012

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:



Date Mailed to Parties:

JAN 20 2012

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

WITNESSES

For Respondent:

Ann L. Miller
Paul Pagano

For Petitioner:

None

EXHIBITS

For Petitioner:

P-1 Record of Electric Usage from July 2009 thru June 2011

For Respondent:

- R-1 Jersey Central Power & Light detailed statement of account for Chelmar
 - R-2 Jersey Central Power & Light Tariff BPU No. 10 Electric Part Two Original Sheet
No 10 updated November 5, 2008
 - R-3 Meter Test Results for Meter Number G28850115
 - R-4 Meter Test Results for Meter Number G17922520
 - R-5 Meter Test Results for Meter Number G28158099
 - R-6 Meter Test Results for Meter Number G28460586
-