



**STATE OF NEWJERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

CLEARY T. AND ELINOR T. REED,	)	ORDER ADOPTING
Petitioners	)	INITIAL DECISION
V.	)	
ATLANTIC CITY ELECTRIC COMPANY,	)	BPU DOCKET NO EC09090737U
Respondent	)	OAL DOCKET NO PUC 10976-10

**Parties of Record:**

**Cleary T. and Elinor T. Reed**, Petitioners, appearing *pro se*  
**L. Patricia Sampoli, Esq.**, on behalf of Respondent, Atlantic City Electric Company

**BY THE BOARD:**

On September 3, 2009, Cleary T. and Elinor T. Reed ("Petitioners") filed a petition with the Board of Public Utilities ("Board") disputing charges for electric service provided by Atlantic City Electric ("Respondent" or "ACE"). The matter was transmitted to the Office of Administrative Law ("OAL") as a contested case. Following an evidentiary hearing, Administrative Law Judge ("ALJ") W. Todd Miller issued an Initial Decision ordering the petition be dismissed. 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.

**BACKGROUND**

On May 8, 2003, Petitioners leased an apartment in Glassboro, New Jersey. In August 2003, an electric account was established in Petitioners' names. Following an outreach to the Board in 2007, Shelly Paolino, district supervisor for ACE, inspected the meter designated for the Petitioners' apartment on October 22, 2007. Paolino testified that, after pulling Petitioners' meter, other areas of the building outside of Petitioners' apartment also lost power. On December 3, 2009, following repairs to the building, Paolino re-inspected the meters and testified that, after pulling Petitioners' meter, the remaining portions of the building appeared to maintain power. To correct Petitioners' billing, Respondent recalculated Petitioners' electric service usage by retroactively applying the kilowatt-hours ("kWh") from the billing period when the meter was properly wired to the kWh usage when the Petitioners' began paying for electric service in 2003.

On September 3, 2009, Petitioners filed a billing dispute petition with the Board against Respondent. Petitioners' petition also included allegations of fraud, of racketeering, as well as of criminal acts and constitutional infringements. On February 16, 2010, Respondent filed an answer denying Petitioners' allegations. Subsequently, the matter was transmitted to the OAL as a contested case and ALJ Miller held a telephone pre-hearing conference. On December 17, 2010, ALJ Miller issued a pre-hearing order finding that the OAL's jurisdiction was limited to determining: (1) whether the Petitioners were improperly charged for excess electric usage; (2) whether they suffered any losses as a result of billing problems; and (3) whether the billing adjustments made by Respondent were reasonable and appropriate under the circumstances.

On January 17, 2012, an evidentiary hearing was held before ALJ Miller, and the record closed. ALJ Miller found Respondent's methodology used following the December 3, 2009 inspection of Petitioners' meter to be inadequate because Respondent erroneously assumed that all residents were home when Petitioners' meter was pulled. ALJ Miller reopened the matter sua sponte. On March 28, 2012, upon ALJ Miller's instruction, Respondent re-inspected Petitioners' meter. Present at the inspection were Petitioners, the landlord, inspectors, Respondent's agents, and ALJ Miller. After pulling power from the meter to Petitioners' apartment and inspecting the building, it was determined that no other unit lost power except for the Petitioners' apartment. On May 1, 2012, a second hearing was held and subsequently the record closed again. ALJ Miller issued an Initial Decision on May 10, 2012, ordering Petitioners' petition be dismissed and Respondent's revised electric bill be approved. On May 23, 2012, the Petitioners' filed exceptions to the Initial Decision. On June 28, 2012, Respondent filed a response to the Petitioners' exceptions.

## **DISCUSSION AND FINDINGS**

Petitioners bear the burden of proof by a preponderance of the believable evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Although Petitioners raised a number of issues, the focus of the OAL proceeding was to determine whether the Petitioners were improperly charged for excess electric usage and whether the billing adjustments made by Respondent were reasonable and appropriate under the circumstances. Based on the competent evidence in the record, ALJ Miller correctly concluded that although there was a diversion of service that resulted in Petitioners being billed for other tenants' electric usage, this diversion was not through any fault of Respondent. ALJ Miller found that ACE acted accordingly by notifying Petitioners and Petitioners' landlord of the diversion and then by recalculating Petitioners' bills after the problem had been allegedly corrected. ALJ Miller found the first recalculation to be inadequate, however. Therefore, ALJ Miller ordered a second inspection, at which ALJ Miller was present. Following the March 28, 2012 inspection, ALJ Miller scheduled another hearing at which both Petitioners and Respondent were given the opportunity to present evidence concerning the second inspection and recalculation. Based on the competent record, ALJ Miller correctly concluded that Respondent's recalculation was accurate and consistent with the law. The Board **HEREBY FINDS** that the findings and conclusions of ALJ Miller are reasonable.

In their exceptions, Petitioners repeat many of the same allegations made in their petition, including those over which the Board does not have jurisdiction to address, e.g. claims of criminal conduct, Uniform Commercial Code claims, etc. Among the allegations that the Board may address, Petitioners argue that: (1) Petitioners' due process rights were violated; (2) Petitioners should not have to pay for electric service at all for the period that Petitioners were billed for others' use of electricity; and (3) because a light remained on in the Petitioners' hallway after power was pulled from Petitioners' meter during the March 28, 2012 inspection, Petitioners were still being improperly charged for electric service.

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, Petitioners' exceptions indicate a general disagreement with the Initial Decision and raise a number of allegations before the wrong forum. Despite the ninety-two paragraphs contained in the exceptions, Petitioners fail to delineate the specific findings of fact, conclusions of law or dispositions with which they take issue, as required by N.J.A.C. 1:1-18.4(b). The Board **HEREBY FINDS** that Petitioners have failed to comply with N.J.A.C. 1:1-18.4(b) and accordingly, rejects Petitioners' exceptions as being substantially inadequate and without merit. However, the Board adds the following brief comments.

Petitioners assert that their due process rights were violated. The basic tenets of due process are adequate notice and a meaningful opportunity to be heard. New Jersey Division of Youth and Family Services v. A.R.G., 179 N.J. 264, 286 (2004). Petitioners were afforded ample opportunity to be heard. After filing their petition, Petitioners took part in two separate OAL hearings where their complaints were heard before ALJ Miller. Petitioners also filed exceptions to ALJ Miller's Initial Decision, pursuant to N.J.A.C. 1:1-18.4. Despite these opportunities, Petitioners offered no competent evidence that they were still being improperly charged for electric service consumed by other tenants. Contrary to Petitioners' assertion, the fact that the light in Petitioners' hallway remained lit after ACE had pulled Petitioners' meter during the March 2012 inspection does not mean that Petitioners are being charged for another tenants' usage. As the ALJ correctly noted, the fact that the light remained on means only that Petitioners do not have to pay for the light's electrical output.

N.J.A.C. 14:3-7.8 provides the standards by which a public utility must investigate allegations of service diversions and related billing disputes. When there is a diversion in electricity as

a result of a construction error in the pipes and/or wires, which was not the responsibility of the beneficiary or landlord, the account of the tenant-customer involved shall be adjusted to charge only for service used based upon a prior use, degree day analysis, load study and/or cooling hours, whichever is appropriate.

[N.J.A.C. 14:3-7.8(g)(3).]

The electric bills "shall be corrected retroactively to the most recent of the following dates: the date of the beginning of the diversion, the date of the beginning of the tenancy, or the date four years prior to the tenant-customer's complaint." N.J.A.C. 14:3-7.8(g)(6). Here, there was a diversion of electric service as a result of four meters recording charges for seven units. After repairs were made, Respondents conducted two inspections, the latter of which was attended by ALJ Miller himself. The record shows that the second inspection was adequate and that

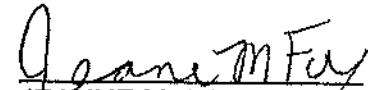
Petitioners no longer were paying for other tenants' electrical service. Further, Respondent adjusted the Reeds' account back to September 2003. Therefore, Respondent's credit adjustment was reasonable and appropriate. N.J.A.C. 14:3-7.8 (g)(3) and (6).

Accordingly, based upon the foregoing, the Board **HEREBY FINDS** that the findings of fact and conclusions of law as set out by ALJ Miller 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: 8/15/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

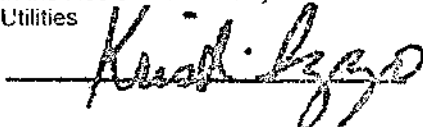
  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA 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



CLEARY T. AND ELINOR T. REED

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC09090737U

OAL DOCKET NO. PUC10976-10

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. PUC 10976-10  
AGENCY REF. NO. EC09090737U

**CLEARY T. AND ELINOR T. REED,**

Petitioners,

v.

**ATLANTIC CITY ELECTRIC COMPANY,**

Respondent.

BPU MAIL ROOM

MAY 17 2012

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**Cleary T. and Elinor T. Reed, petitioners, pro se**

**L. Patricia Sampoli, Esq., for respondent (Youngblood, Lafferty & Sampoli, attorneys)**

Record Closed: May 1, 2010

Decided: May 10, 2012

BEFORE W. TODD MILLER, ALJ:

**STATEMENT OF THE CASE**

On September 3, 2009, Cleary T. and Elinor T. Reed (Reeds or petitioners) filed a billing dispute against Atlantic City Electric Company (ACE) with the Board of Public Utilities (Board or BPU). In addition to the billing dispute, the complaint includes allegations of fraud and racketeering, as well as allegations of other crimes (deception, violations of the Uniform Commercial Code, violations of ACE's tariff, New Jersey statutes), and constitutional claims. Most of the allegations are beyond this tribunal's jurisdiction.

ACE provided proof that it properly recalculated petitioner's electric bill once it discovered comingled internal wiring and was assured it was effectively repaired. For the reasons discussed below, the claims asserted by petitioners are **DENIED** and their electric service is adjusted as set forth herein.

### PROCEDURAL HISTORY

The petitioners requested a fair hearing and the matter was transmitted to the OAL on October 7, 2010, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on January 17, 2012, and the record closed. The record was reopened by the undersigned and supplemental testimony and evidence was permitted on May 1, 2012, and the record closed.

### SUMMARY OF RELEVANT FACTS

The Reeds entered into a Lease on May 8, 2003, for an apartment located on XX4 N. [X.] Drive, Glassboro, New Jersey (C-1). The lessor was John Coppola. The building consisted of seven units mixed between commercial and residential. The Reeds rented a first floor unit. The Reed unit consisted of two bedrooms, kitchen, living room, and dining room. The heat and some appliances are serviced by natural gas. Several years subsequent to the initial lease, air conditioning was added to the unit.

Paragraph 13 of the Lease provides: "Tenant shall be responsible for arranging and paying for all utility services required on the premises, except Landlord will provide: included but not to exceed \$40 per month" (C-1).

Atlantic City Electric (ACE) supplies electric service to the Reed apartment. When the Reeds moved into the apartment in 2003, their landlord told them to switch the account over from his name to their name. ACE records reflect that the account was opened in the Reeds' name in approximately August 2003.

ACE provided, and the Reeds paid for, service during the period August 2003 through 2007. In or around September 2007, the Reeds filed a complaint with the Board of Public Utilities (BPU). The Reeds asserted, inter alia, that their electric bill was too high and that they were being charged a commercial rate. The complaint was referred from the BPU to ACE.

Shelly Paolino is a District Supervisor with ACE. She was assigned the complaint. Her job is to conduct inspections involving meters and other similar matters. On October 16, 2007, at 10:00 a.m., Paolina, along with a meter person, met Mr. Reed at the property. A representative from the landlord was supposed to be present, but did not attend (C-2).

Paolino testified that the electric company owns the meter, but the electric socket and all of the internal wiring is the property of the landlord. In this instance, the meter person pulled the meter from the socket terminating electric service to the Reeds' unit. There were four meters at the time of the inspection in October 2007. The process enabled the meter person to confirm which units are tied to each meter. In this case, when the meter was pulled for the Reeds' apartment, other areas of the building also lost power. Specifically, the commercial insurance company, Unit 1D, and other hallway areas also lost power. ACE concluded that the Reed's meter was also metering electric for other areas of the building.

On October 26, 2007, ACE contacted the property manager who, at this time, was East Coast Management, LLC (P-3, Exhibit E). The property manager was advised of ACE's findings, including that several units were comingled and run through one meter. The letter also confirmed that the property manager had hired an electrician to rewire the building. On December 5, 2008, permits were issued. (C-3). Electrical repairs were made to the building by Derita Electric. (C-3). The plans and repairs were approved by the local inspectors. (C-3). A cut-in card was issued by the local inspector to ACE. This card permits ACE to restore service.

Judith Rogozinski, a Senior Analyst with ACE, was assigned to handle the correction of the billing as it related to the service diversion. Once ACE confirmed that



there was an internal wiring problem, any interruptions of the Reed's power for non-payment were placed on hold pending the repairs to the internal wiring. The Reeds continued to make partial payments toward their electric service, which were fully credited to their account.

Rogozinski explained that once the electrical contractor completed the rewiring of the building, ACE conducted a new inspection to make sure that the Reeds' meter was only recording electric service for their unit.

Shelly Paolino completed this inspection with a meter person on December 3, 2009. During this inspection, seven meters were observed (one for each unit). All of the meters were checked. When the meter for Unit 1A (the Reeds' unit) was pulled from the socket, the remaining portions of the building appeared to maintain power. The comingled electric observed on October 16, 2007, appeared to have been resolved as it related to the Reeds' unit. There were some residual labeling problems relating to other meters (Units 1D and 1C) and the house meter was disconnected, but jumpers were found behind the socket indicating possible theft of service.

Once ACE confirmed that the problem with the Reed meter (Unit 1A) was resolved, Rogozinski reconstructed the billing for the Reeds (R-2). Rogozinski's methodology was simple and straightforward.

Rogozinski used the kw hours for a billing period where the Reeds' meter was properly wired and retroactively applied the kw useage back to when the Reeds moved into the apartment in 2003. Rogozonski reasoned that new meters for all seven units were installed on or after May 2008. Therefore, the period from May 2008 through April 2009 represented a twelve month timeframe where the Reeds' meter was properly registering electric usage for their unit only. Rogozinski put the new kw hours through a proprietary ACE program designed to recalculate the electric service usage. The program not only adjusts for rates in place for the specific year, but also adjusts the billing for the number of days, the weather, and other factors in the billing cycles (R-2).

During my review of proofs offered by Rogozinski, it became apparent that the methodology used by ACE on December 3, 2009, was not adequate. During the December 3, 2009, inspection, ACE disconnected the Reeds' service by only pulling the Reeds' meter. The assumption by ACE was that if no residents complained that their service was also terminated, the repairs made by the former landlord in 2008 were effective in resolving the comingled internal wiring. This logic was flawed because, if no one was home at a particular apartment, and their service was disconnected when the Reed meter was pulled, it would go unnoticed by ACE.

The record was reopened sua sponte. A new inspection was scheduled for March 28, 2012. Present were various representatives from ACE, including counsel and technical personnel, petitioner, the landlord, local electrical and building inspectors, and the undersigned. The Reeds' meter was pulled again. The electric service for the Reeds' apartment was terminated by pulling their meter. All electric service in the Reeds' unit was terminated except for a hallway light<sup>1</sup>.

The present landlord, Joe Contino, was extraordinarily cooperative. Contino obtained permission from all of the tenants so that access could be gained to all of the apartments. An inspection ensued of all of the remaining apartments and commercial units. And service for every residential and commercial unit remained on, except for the Reeds' unit. This confirmed that no other units were being metered for electric service by the Reeds' meter.

Contino purchased the apartment complex in August 2010. Contino did not make any major electrical repairs to the internal wiring. The repairs involving the Reeds' complaints were made by the prior landlord. The last electrical repairs were made comusreate with repairs in electrical permits from 2008 (C-3).

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<sup>1</sup> The fact that a hallway light remained on in the Reed's apartment was not relevant to the recalculation of the Reeds' electric bill. On the contrary, the fact that one light remained on in the Reeds' apartment meant that they were now receiving electric service for that one light and it was not being billed through their meter.

Based upon the March 28, 2012, inspection, ACE recalculated petitioner's electric bill for the period September 2003 to December 2010. The recalculations were as follows:

Bill Month	As-Billed		As-Corrected	
	kWh	Bill Amount	kWh	Bill Amount
Sept-03	588	\$87.50	450	\$61.40
October-03	989	\$143.76	992	\$130.46
November-03	643	\$72.56	812	\$90.60
December-03	922	\$101.26	775	\$102.57
January-04	1,252	\$138.59	1,287	\$142.72
February-04	1,192	\$135.53	1,044	\$118.51
March-04	1,160	\$132.94	960	\$109.87
April-04	1,170	\$133.85	754	\$86.96
May-04	1,073	\$121.00	1,080	\$122.60
June-04	1,396	\$182.17	992	\$119.17
July-04	1,445	\$220.53	1,050	\$148.20
August-04	1,606	\$243.92	1,131	\$160.07
Sept-04	1,723	\$265.37	990	\$141.25
October-04	670	\$102.38	928	\$127.22
November-04	667	\$89.12	812	\$78.39
December-04	2,762	\$324.27	800	\$93.60
January-05	1,847	\$138.59	1,209	\$138.49
February-05	1,634	\$184.74	1,008	\$115.85
March-05	1,832	\$207.00	960	\$111.22
April-05	1,804	\$204.92	780	\$91.05
May-05	1,140	\$165.50	1,044	\$119.98
June-05	1,434	\$171.75	992	\$119.52
July-05	1,812	\$276.61	1,050	\$172.99
August-05	2,113	\$322.45	1,131	\$162.23
Sept-05	2,438	\$371.33	870	\$123.28
October-05	2,423	\$364.96	1,056	\$147.71
November-05	1,762	\$232.31	812	\$103.43
December-05	1,391	\$172.35	825	\$105.71
January-06	1,868	\$232.98	1,209	\$151.85
February-06	1,954	\$242.98	1,008	\$126.81
March-06	2,536	\$310.72	960	\$121.70
April-06	1,667	\$210.24	754	\$96.25
May-06	1,259	\$161.81	1,080	\$135.86
June-06	1,397	\$199.63	992	\$132.46
July-06	1,813	\$317.83	1,050	\$172.99
August-06	2,241	\$394.22	1,131	\$188.41
Sept-06	2,235	\$394.69	960	\$158.37
October-06	1,790	\$299.75	928	\$150.29
November-06	1,558	\$221.16	840	\$119.28
December-06	1,758	\$234.92	800	\$113.95
January-07	1,870	\$162.67	1,209	\$169.11
February-07	2,076	\$290.14	1,008	\$141.17
March-07	3,140	\$428.89	960	\$135.37

April-07	2,071	\$289.01	754	\$107.02
May-07	1,625	\$225.33	1,080	\$151.25
June-07	1,761	\$266.52	992	\$143.52
July-07	2,352	\$415.16	1,050	\$181.05
August-07	2,665	\$471.69	1,131	\$195.83
Sept-07	2,750	\$495.94	990	\$169.48
October-07	2,632	\$453.43	928	\$156.13
November-07	1,902	\$273.35	812	\$119.61
December-07	2,242	\$312.99	800	\$118.61
January-08	2,377	\$341.11	1,209	\$176.32
February-08	2,319	\$332.45	1,008	\$147.41
March-08	2,260	\$324.33	960	\$140.79
April-08	2,181	\$316.32	754	\$113.03
May-08	810	\$120.82	1,080	\$159.39
June-08	1,043	\$160.02	992	\$152.29
July-08	1,407	\$256.51	1,050	\$189.27
August-08	2,070	\$382.15	1,131	\$205.32
Sept-08	1,589	\$291.29	990	\$178.51
October-08	1,552	\$272.63	928	\$160.68
November-08	1,166	\$160.77	812	\$119.75
December-08	1,153	\$168.78	825	\$122.29
January-09	1,389	\$200.22	1,287	\$188.13
February-09	1,140	\$166.59	1,008	\$147.88
March-09	1,235	\$180.44	900	\$132.92
April-09	1,218	\$178.20	806	\$119.75
May-09	1,454	\$213.83	1548	\$227.17
June-09	879	\$152.77	930	\$161.79
July-09	720	\$136.79	1120	\$215.65
August-09	871	\$166.65	1131	\$218.66
Sept-09	769	\$145.99	900	\$172.21
October-09	778	\$133.59	1024	\$175.71
November-09	944	\$148.72	812	\$128.63
December-09	1,037	\$163.06	750	\$119.37
January-10	2,199	\$340.62	1287	\$201.74
February-10	2,052	\$318.66	1044	\$164.12
March-10	1,524	\$237.18	870	\$137.58
April-10	908	\$143.88	832	\$132.31
May-10	943	\$148.69	1044	\$164.08
June-10	909	\$165.32	930	\$169.20
July-10	842	\$167.40	1120	\$225.43
August-10	966	\$194.14	1131	\$228.61
Sept-10	939	\$189.48	930	\$187.57
October-10	908	\$162.77	1024	\$183.59
November-10	794	\$129.84	784	\$128.29
December-10	957	\$155.83	750	\$123.37
	136,352	\$20,081.15	85,721	\$12,720.23

See, PH<sup>2</sup>-1

<sup>2</sup> Post-hearing (PH)

Rogozinski performed the recalculation of the Reeds' electric bill. She used a period where the Reeds' electric service was corrected, which in this case was after Contino purchased the property in 2010. The billing period from January 2011 to December 2011 represented a period where no further repairs were made to the internal wiring of the building. Indeed the Reeds' service could not have been comingled with other units during this period because no further repairs to the wiring were initiated by Contino. And the prior repairs were made in 2008.

Rogozinski used the actual kw hours for twelve months in 2011 and extrapolated the kw hours retroactively to September 2003. This was the date service was initiated in the Reeds' name. Rogozinski revised the Reeds' bill through to December 2010, the date just before the base year used to recalculate the bill. The new kw hours were put through a proprietary program that adjusts the kw hours to match the billing periods, weather conditions and other circumstances. The result was a reduction in the Reeds' bill in the amount of \$7,360.92. Certain adjustments already provided to the Reeds had to be incorporated into this process. The bill was resolved as follows:

As Originally Billed September 2003 – December 2010	\$20,081.15
As Corrected September 2003 – December 2010	(\$12,720.23)
Difference	<u>\$7,360.92</u>
Less: Credits already provided:	
ACE September 2, 2010	\$3,861.19
Paid by Landlord on Behalf of	
Reeds - April 30, 2008	<u>\$500.00</u>
Total Credits Applied	<u>\$4,361.19</u>
Balance Due Reeds Before Payment of Current Bill	<u>\$2,999.73</u>
Reed's Outstanding Electrical Bill–May 1, 2012	(\$2,219.64)
Balance Due to the Reeds	<u>\$780.15</u>

The Reeds assert a myriad of other claims, including fraud, deception, violations of the Uniform Commercial Code, violations of the ACE tariff, and violations of New Jersey statutes, as well as constitutional violations. The Reeds charge that all their electric bills for the period September 2003 through April 2009 should be voided. This would result in the Reeds receiving free electric service for almost six years.

The Prehearing Order established that the OAL's jurisdiction was limited to determining whether the Reeds were improperly charged for excess electric usage, did they suffer any losses as a result of billing problems, and were the billing adjustments made by ACE reasonable and appropriate under the circumstances (See Prehearing Order dated December 17, 2010). Therefore the hearing and initial decision are confined to these issues.

### CONCLUSIONS

Public utilities have a duty to investigate allegations of service diversions and related billing disputes. N.J.A.C. 14:3-7.8 et seq. And "in cases where the diversion of gas or electricity is a result of a construction error in the pipes and/or wires, which was not the responsibility of the beneficiary or landlord, the account of the tenant-customer involved shall be adjusted to charge only for service used based upon a prior use, degree day analysis, load study and/or cooling hours, whichever is appropriate." N.J.A.C. 14:3-7.8 (g)3. When a diversion of service is detected, bills shall be corrected retroactivity to the beginning of the diversion. N.J.A.C. 14:3-7.8 (g)6.

It is undisputed there was a diversion or comingling of electric service as a result of four meters recording charges for seven units. The regulations involving billing disputes and diversion of services are set forth in N.J.A.C. 14:3-7.1, et seq. There is no evidence, however, that this was the result of any activities of ACE. The socket and internal wiring are the responsibility of the landlord. ACE's responsibility ends at the meter.

How, why, and when the internal wires were installed or comingled by the landlord or its agents is a finding that is beyond this record. The former landlord was

not a party to this action. And the Reeds have suggested that they have filed claims against their former landlord in other forums. See petition. There was no evidence that ACE was complicit or responsible in causing any of the problems associated with the wiring problems related to the Reeds' unit. Once ACE determined that there had been a diversion of service, they must notify the landlord and demand that the problem be corrected, as they did in this case<sup>3</sup>. N.J.A.C. 14:3-7.8(d)6.

ACE may attempt to facilitate a resolution of the problem between the customer, landlord and tenant. N.J.A.C. 14:3-7.8(f). In cases where the diversion (or the comingling of wires) is a result of construction error, the account of the tenant involved **shall be adjusted to charge only for service used based upon prior usage, degree day analysis, load study, and/or cooling hours, whichever is appropriate.** N.J.A.C. 14:3-7.8(g)3. Billings shall be **corrected retroactively** to the date of the beginning of the diversion, the beginning of the tenancy, or four years prior to the date of the tenant's diversion complaint. N.J.A.C. 14:3-7.8(g)6.

I **CONCLUDE** that the credit adjustment of \$3,861.19 was reasonable and appropriate under the circumstances. N.J.A.C. 14:3-7.8(g)3; N.J.A.C. 14:3-7.8(g)6. A customer of ACE experienced excess billing due to comingled internal wires, which was not the fault of either the customer or ACE. ACE readjusted the customer's billing by taking a reliable twelve month cycle of kw hours and overlaid the usage to the disputed period. Appropriate rate adjustments were made for each year, revised bills were generated and all prior payments were credited. This is consistent with the company's obligation pursuant to the regulations cited herein.

There is no question that the Reeds' wiring problems caused them great frustration. They have spent an inordinate amount of time trying to unravel the origin of the problems related to the comingled internal wiring, including numerous conferences, meetings, legal filings, and settlement conferences. But the internal wiring problems were not due to any activity associated with ACE. ACE, like the Reeds, became

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<sup>3</sup> See ACE answer - paragraph 8. There was a meeting scheduled between Reeds, ACE and the Landlord at the premises on October 16, 2007. IT65-66. Also permits were drawn by the former Landlord in 2008 confirming corrective action was initiated. Written notice was sent to the Landlord on October 26, 2007, by ACE (P-3E).

entangled in a wiring dispute, the origin of which is beyond its responsibility. ACE experienced the same frustration.

**ORDER**

Based upon the foregoing, the ACE revised electric bill is **APPROVED** and ACE is ordered to make the adjustments to the Reeds' bill as noted above. All other relief sought by petitioners is **DENIED** and the action 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, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 10, 2012  
DATE

  
\_\_\_\_\_  
W. TODD MILLER, ALJ

Date Received at Agency: 5-10-12

Date Mailed to Parties: 5-10-12

/sd



**WITNESSES AND DOCUMENTS IN EVIDENCE**

**WITNESSES**

**For Petitioner:**

Cleary T. Reed

**For Respondent:**

Shelly Paolino  
Judith Rogozinski

**EXHIBITS**

**For Petitioner:**

- P-1 Tariff, Section II
- P-2 Meter Layout
- P-3 Discovery Packet, 5/18/11
- P-4 Deed – Coppola to Coppola, 1/31/00
- P-5 Deed – Coppola to Park Place Investment Properties, LLC, 4/26/07

**For Respondent:**

- R-1 Email, Paolino to Rogizinski, 12/3/09
- R-2 Adjusted Statement
- R-3 Billing Statement
- R-4 Account Statement – Current Usage
- R-5 Account Statement – 2003 to 2008

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By the Court:

- C-1 Residential House Lease Agreement
- C-2 Memos/E-mails – Paolino to Rogozinski
- C-3 Electrical Permits and Cut-in card

Post-Hearing:

- PH-1 Recalculation of Reeds' electric bill (9/03 to 12/10)