



## **BACKGROUND**

Petitioner, on his own behalf, testified first at the hearing. Mr. Love testified that when he noticed an increase in his electric bill in January 2015, he contacted the Company, and an employee from the Company came to his residence to check his meter, replacing it with a new meter. Mr. Love further testified that he then called the Company in March 2015 to ask what he should be paying towards his electric bill. He testified that the individual he spoke to at the Company in March 2015 advised him that his meter was faulty and he would be given a bill credit. When asked, Mr. Love testified that he did not have the name of the person at the Company who told him that. He testified that he knew the date of the call only and that the Company advised him that it cannot locate a recording of the call without the representative's name.

Petitioner further testified that he received a shut-off notice for nonpayment in June 2015. He testified that he called the Company after receiving this notice but the Company then denied that there had been a determination that his old meter was faulty. Mr. Love said he then filed the Petition in this matter.

Mr. Love testified that he received a letter from the Company regarding the meter test results, but that it lacked detail. He also testified that his apartment is too small to have used the amount of electricity for which he was charged in January 2015.

The first witness for the Company was Gary Nye. He testified that he is a senior regulatory assessor, meaning he handles escalated complaints that come to the Company through the state regulatory bodies. He testified that he has held that position for approximately one year and has been employed by ACE for over nine years.

Mr. Nye testified that he performed an analysis of Mr. Love's account. He testified that Mr. Love complained of his bills from September 2014 through January 2015. Mr. Nye made reference to exhibit R-1 in evidence, a usage statement showing the kilowatt hours of electric usage, charges resulting from that use, and days in the billing cycles from January 2014 through December 2016. Mr. Nye testified that he prepared R-1 to perform a daily kilowatt hour comparison between the same months in different years on Mr. Love's account, and found that the daily kilowatt hour usage did not vary significantly. He also testified that the number of days in the January 2015 billing period was greater than in January 2014 due to a change in billing cycle periods, partially explaining the higher bill in January 2015.

Mr. Nye testified that Petitioner's usage from November 2014 through March 2015 was fairly consistent and that there was no basis for making an adjustment to Mr. Love's account.

On cross examination, Mr. Nye testified that meters do not have intermittent problems. He acknowledged that Petitioner's usage for January 2015 was higher than in previous years, but testified that the usage was consistent over the time period from September 2104 through March 2015.

On redirect, Mr. Nye acknowledged that there are factors other than the amount of days in a billing cycle that effect electric usage for an account, like thermostat settings, appliances used inside the home, and outside temperatures, and that some of these are things about which the Company would have no knowledge.

The next witness for the Company was Robert Polk, a senior engineering meter specialist. He testified that he has held that position for over 20 years and has been employed by the Company for approximately 20 years. He testified that his job duties include testing of electrical meters and oversight of that testing.

Mr. Polk testified that ACE performed a test on the meter that was removed from Petitioner's home in February 2015. In his testimony, Mr. Polk referred to results of the meter test for Petitioner's meter, which was exhibit R-5 in evidence. He testified that the tests found that the meter removed from Petitioner's home was functioning within tenths of a percent of 100 percent accurate, which means it was functioning properly.

Mr. Polk further testified as to the chain of custody of the meters, each of which is identified by a unique serial number assigned by the Company. He testified that all the tests performed on the meter removed from Mr. Love's home indicate that the meter was functioning properly at all times.

In closing, Mr. Love again stated that a representative from the Company told him in March 2015 that his meter was found to be faulty. In its closing, the Company asserted that Petitioner had not met the burden of proving his claim by a preponderance of the evidence.

Based on the testimony, ALJ Kennedy found that the meter removed from Petitioner's home was functioning accurately in accordance with law. ALJ Kennedy further found that Petitioner failed to provide any legally competent evidence to support his claim that the meter was inaccurate, and that Petitioner's daily electricity usage in January 2015 fell squarely within the range of his daily electricity usage from November 2015 through March 2015.

### **DISCUSSION AND FINDINGS**

In customer billing disputes before the Board, Petitioners bear the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is found to be 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).

Here, Petitioner failed to present any compelling evidence to prove that the meter readings from the time in question were inaccurate. He thus failed to prove that he had been overcharged for electricity consumption during the months in question. Pursuant to N.J.A.C. 14:5-4.3, "[n]o meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment." Here, as evidenced by exhibit R-5, and supported by the expert testimony of Mr. Polk, Petitioner's meter was functioning at 100.286% accuracy, which is within the legally acceptable range of accuracy. There was no competent, credible evidence presented that proved the meter was measuring more consumption than Petitioner actually used at any time.

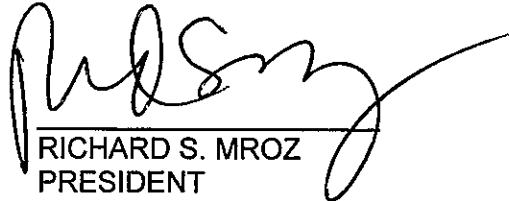
After review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of ALJ Kennedy to be reasonable and, accordingly, **HEREBY ACCEPTS** them.

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

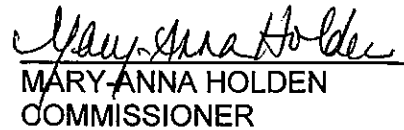
This order shall be effective May 1, 2017.

DATED: 4/21/17

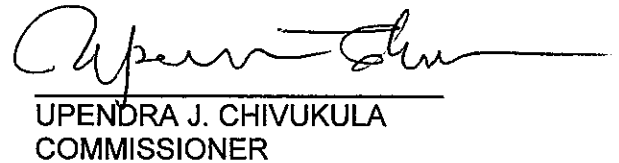
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

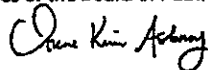
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
SECRETARY

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



**GREGORY LOVE**

**V.**

**ATLANTIC CITY ELECTRIC COMPANY  
BPU DOCKET NO. EC16020114U  
OAL DOCKET NO. PUC 05183-16**

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

**INITIAL DECISION**

OAL DKT. NO. PUC 05183-16

AGENCY DKT NO. EC16020114U

**GREGORY LOVE,**

Petitioner,

v.

**ATLANTIC CITY ELECTRIC**

**COMPANY,**

Respondent.

**Gregory Love, petitioner, pro se**

**Pamela J. Scott, Esq., for respondent Atlantic City Electric Company**

Record Closed: December 15, 2016

Decided: January 26, 2017

BEFORE **JOHN S. KENNEDY, ALJ:**

*CMS*  
*V. Haynes*  
*D. Lee Thomas*  
*G. Hartsfield*  
*J. Ford*  
*C. Jordan*  
*R. Matos*  
*R. Lambert*  
*J. Gertsma*  
*B. Agee*  
*C. Uachier*

**STATEMENT OF THE CASE**

On February 2, 2016, Gregory Love (hereinafter Love or petitioner) filed a billing dispute against Atlantic City Electric Company (hereinafter ACE) with the Board of Public Utilities (hereinafter Board or BPU). ACE supplies electric service to the Love home. Petitioner believes there was an issue with his electric meter, and he alleges that the failure of the meter caused him to be overcharged.

## PROCEDURAL HISTORY

The petitioner requested a fair hearing, and the matter was transmitted to the Office of Administrative Law (OAL) where it was filed on April 5, 2016, 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 December 15, 2016, and on that date the record closed.

## SUMMARY OF RELEVANT FACTS

The record in this matter includes documentary evidence and the testimony of the individuals who prepared the documents or had knowledge of the matter. After considering the evidence presented, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Petitioner has lived at his current residence for fifteen years. In 2014 petitioner's monthly kilowatt (hereinafter KWH) usage averaged 358 KWH. In January 2015, petitioner was charged for 787 KWH for that monthly billing cycle. As a result, petitioner asked that the meter be checked and tested.

The meter was removed and replaced on February 25, 2015. In January 2014, petitioner was charged for 404 KWH of electricity usage. The January 2014 billing cycle was 31 days. In January 2016, he was charged 491 KWH hours for a billing cycle of 29 days. The January 2015, billing cycle contained forty days as a result of a change in respondent's billing process. In January 2015, petitioner's daily usage was 19.68 KWH. Petitioner asserts that his usage did not change in any way. He does not have electric heat in his home. Petitioner contends that he spoke to a representative from ACE shortly after the meter was replaced and he was told that this meter was faulty. He does not know with whom he spoke and ACE has no records of such a conversation and denies that the meter was faulty.

Gary Nye is a Senior Analyst with ACE, and he was assigned the petitioner's complaint. His job is to handle billing disputes and inquiries. Nye testified that as a result of petitioner's complaint, he prepared usage statement for the premises. (R-1.)

His review revealed that petitioner's January to December 2015 usage was comparable to that same time period in other years. (R-1.) The January 2015, usage increased significantly but there were more days in that billing cycle. He conducted a daily usage analysis and determined that petitioner's daily usage from November 2014 through March 2015 was between 18.89 KWH and 20.79 KWH.

Robert Polk, a senior engineer for the ACE meter department, was assigned to test the old meter. His testing of meter #99G064613687, which was removed from the Love residence, was on February 24, 2015. The meter was tested for full load (FL), light load (LL), and power factor (PF). The average accuracy was 100.29 percent. (R-5.) This fully complied with New Jersey state regulations. This indicates that the meter was functioning properly. After testing, the meter was retired and placed in storage, where it would typically be kept for ninety days and then discarded.

### **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 those matters that are justifiably 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).

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

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

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

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



be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

In this case, meter #99G064613687, which was removed from the Love residence, was registering at 100.29 percent. Being not more than two percent over or under 100 percent, the meter was accurate in accordance with the regulation. Love provided no legally competent evidence to support the claim that the meter was inaccurate. The increase in KWH usage in January 2015, could be accounted for by number of days in the billing cycle. In January 2015, petitioner's daily usage was 19.68 KWH which falls squarely between petitioner's daily usage average from November 2014 through March 2015, which was between 18.89 KWH and 20.79 KWH. I therefore **CONCLUDE** that the meter that was removed from the Love residence on February 24, 2015, was accurate.

### **ORDER**

All relief sought by petitioner is **DENIED** and the action filed by petitioner is **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 26, 2017  
DATE



\_\_\_\_\_  
**JOHN S. KENNEDY, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JSK/dm

**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner:**

Gregory Love

**For Respondent:**

Gary Nye

Robert Polk

**LIST OF EXHIBITS**

**For Petitioner:**

None

**For Respondent:**

- R-1 Customer Usage Statement
- R-2 Photocopies of Bills, January 2014 through November 2016
- R-3 Billing Statement, August 2014 through November 2016
- R-4 Correspondence, dated October 30, 2015
- R-5 Meter test results