

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6744

Petition of Lance Polya vs. Central Vermont Public)	
Service Corporation in re: billing dispute concerning)	Hearing at
amount of usage at petitioner's residence located in)	Montpelier, Vermont
Jericho, Vermont)	August 27, 2002

Order entered: 9/30/2004

PRESENT: Judith M. Kasper, Esq., Hearing Officer

APPEARANCES: Lance Polya, Pro Se

Helen M. Fitzpatrick, Esq.
for Central Vermont Public Service Corporation

I. INTRODUCTION

This case concerns a billing dispute between Mr. Lance Polya and Central Vermont Public Service Corporation ("CVPS"). Mr. Polya contends that the charges for electric service billed to him by CVPS for service received between April 13, 2002, through May 16, 2002 ("April/May period"), did not correctly reflect the electric usage at his residence at that time. Mr. Polya asserts that the electric meter reading applicable to that time period was inconsistent with his average monthly electric usage and his actual use of electric power during that period. Mr. Polya, therefore, requests that the Public Service Board ("Board") order CVPS to reduce its charges to his account applicable to the April/May period. In this proposal for decision, I recommend that the Board order CVPS and Mr. Polya to bear equally the cost attributable to the discrepancy between the April/May meter reading and the consistent typical electric power usage at Mr. Polya's residence.

On July 2, 2002, Mr. Polya filed a request for a Board order to resolve the subject dispute. A technical hearing on the matter was held on August 27, 2002, at which Mr. Lance Polya appeared pro se, and Helen Fitzpatrick, Esq., represented CVPS.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

II. FINDINGS

1. With the exception of the period April 13, 2002, through May 16, 2002 ("April/May period"), CVPS bills rendered to Mr. Polya for electric service at his residence in Jericho, Vermont, indicated that he had used between 100 and 200 kilowatthours of electricity per month during the period August 1997 through August 2002. Tr. 8/27/02 at 8-9 and 13; Petition at 3.

2. The CVPS bill for the April/May period rendered to Mr. Polya indicated that he had used 350 kilowatthours of electricity at his residence during that time period. Tr. 8/27/02 at 9 and 13; Petition at 3.

3. During the April/May period, Mr. Polya did not do anything out of the ordinary that would require or cause atypical utilization of electric power at his residence. Tr. 8/27/02 at 11.

4. On May 30, 2002, CVPS conducted a forced load test on the electric meter that measured electricity usage at Mr. Polya's residence, and over the period May 30, 2002, through June 14, 2002, CVPS conducted a side-by-side test of that meter; both tests showed the meter to be functioning properly. Tr. 8/27/02 at 16-18; exh.CVPS-1.

5. A representative of CVPS, Duane Spaulding, and Mr. Polya investigated possible reasons for the atypical 350 kilowatthour reading, but neither could arrive at an explanation for it. Tr. 8/27/02 at 11-13.

III. DISCUSSION

This case presents a situation where there is inconsistent evidence concerning electric usage at the customer's residence. Mr. Polya questions whether CVPS billed his Jericho, Vermont, residential account accurately for electric service applicable to the April/May period. At the technical hearing, he testified that he was intimately familiar with the electrical system at his residence because he did all the wiring in the house as well as the wiring from the CVPS pole to the house.¹ Mr. Polya further testified that during the period in question he used electricity as he customarily does. He also testified that he was away from his home for ten days during that

1. Tr. 8/17/02 at 9.

period, and that, before he left home for those ten days, he took actions that would minimize electricity use at his home – specifically, he turned off his water supply valve and water pump, as well as some of his electronics, and turned down his refrigerator setting.²

CVPS does not dispute the fact that the April/May period electric bill is atypical for Mr. Polya's account. However, CVPS presented uncontroverted evidence that, subsequent to the atypical meter reading in question, the meter used to measure electric use at Mr. Polya's residence had been tested twice, and that both tests showed the meter to be functioning properly. CVPS, therefore, asserts that it must charge Mr. Polya in accordance with the meter reading in order to be in compliance with its tariff.

The Board previously has dealt with discrepancies between a meter reading and a customer's asserted electric power usage. It has determined that, "as a matter of law . . . a meter which tests accurate is conclusively established to have been accurate previously."³ In addition, the Board has held that, in order to rebut a ratepayer's *prima facie* case concerning electric usage, it is sufficient for an electric company to present evidence that, at a given location, adequate load exists to account for the usage recorded by a meter that has tested accurate.⁴

Both Mr. Polya and CVPS have presented credible evidence in this proceeding. CVPS has presented evidence that the meter used to measure electric usage at Mr. Polya's residence tested accurately. CVPS' witness testified that subsequent to the April/May period, the meter was tested twice, and that both tests showed the meter to be functioning properly. Board precedent dictates that such evidence, as a matter of law, conclusively establishes that the meter was working accurately prior to those tests. Board precedent further affords an irrebuttable presumption in favor of CVPS upon the company also presenting evidence that adequate load existed at Mr. Polya's residence to account for the 350 Kwh recorded by the meter. However, CVPS has not presented such evidence. Accordingly, I conclude that CVPS has not met its evidentiary burden to rebut Mr. Polya's *prima facie* case, and that, therefore, I must resolve

2. Tr. 8/17/02 at 10-11; exh. Petitioner's 1.

3. Docket No. 5046, Order of 2/3/87, at 10.

4. *Id.*, at 9.

factual issues by weighing CVPS' evidence concerning the accuracy of the meter reading against Mr. Polya's evidence concerning his use of electric power during the April/May period.

Mr. Polya offered uncontroverted direct evidence concerning his electricity usage over a five-year period, including the April/May period. That evidence strongly suggests that the 350 Kwh for the April/May period recorded by the meter was an aberration. Neither CVPS nor Mr. Polya have offered any explanation for the large usage change shown by the meter.

After evaluating the evidence in the record here, I am not persuaded either that the evidence presented by CVPS outweighs the evidence presented by Mr. Polya, or vice versa. Therefore, I recommend that Mr. Polya and CVPS share equally the responsibility for the cost attributable to the subject discrepancy.

This case also highlights the need to revisit the Board's prior holding that "as a matter of law . . . a meter which tests accurate is conclusively established to have been accurate previously," and that in order to rebut a ratepayer's *prima facie* case concerning electric usage, it is sufficient for an electric company to present evidence that, at a given location, adequate load exists to account for the usage recorded by a meter that has tested accurate.⁵ In setting this standard, the Board endeavored to protect electric utility companies from being required to bear an impracticably high burden of proof.⁶ While this clearly is a legitimate concern, I observe that, in meter related billing disputes, this standard effectively forecloses Board consideration of all evidence other than that of the meter accuracy test and the potential load factors. Hence, the current standard disallows consideration of *any* other evidence that may be relevant to a determination about whether a meter might have malfunctioned at some time prior to the time of its accuracy testing, including evidence about and/or arising from the meter function and readings themselves. In addition, the current standard effectively rejects out of hand evidence presented by the ratepayer that may address with specificity the functioning of the meter *at the time of the possible malfunction*. Similarly, the current standard leaves no opportunity for consideration of any non-customer cause for an atypical or unexpected meter reading. Thus, evidence on matters

5. Docket No. 5046, Order of 2/3/87, at 9-10.

6. Docket No. 5046, Order of 2/3/87, at 9.

such as billing history, patterns of electricity usage, and actual usage of items that require electricity cannot be considered once the electric service company shows that the meter tested accurately at some undefined time *after* a possible malfunction.⁷

Consequently, under the current standard, the accuracy of the meter, as evidenced by testing done at some point in time after the possible malfunction, is, in effect, the sole criterion available for resolving meter related billing disputes. While this approach protects electric utility companies from being required to bear an impracticably high burden of proof, it also eliminates virtually all opportunity for a customer to prevail in these cases. Thus, in the instant case, had CVPS met its evidentiary duty under Docket No. 5046 to show that there was adequate potential load at Mr. Polya's residence to use the 350 Kwh recorded by the meter, Mr. Polya would have been barred from any recovery notwithstanding the inability of either party to explain the large change in usage during the April/May period. In these situations, customers such as Mr. Polya should be able to present evidence relevant to usage during the disputed period, even if the meter worked properly after that disputed period.

The existing Board policy has been rejected by both the Pennsylvania and Michigan Public Utility Commissions. In *Waldron v. Philadelphia Electric Company*, the Pennsylvania Commission explicitly adopted a policy (consistent with Michigan's policy) to consider not only the accuracy of the meter, but also "the billing history of the Complainant, any change in the number of occupants residing at the household, the potential for energy utilization and any other relevant facts or circumstances that are brought to light during the complaint proceeding."⁸

I also note that when the Board established that "as a matter of law . . . a meter which tests accurate is conclusively established to have been accurate previously,"⁹ it implicitly

7. I note that Docket No. 5046 leaves a two-part impact. Clearly, Docket No. 5046 creates an irrebuttable presumption in favor of the utility company once it shows that the customer had the potential load and that the meter tested accurately. However, the holding in Docket No. 5046 also has the effect of foreclosing consideration of a ratepayer's evidence concerning electric power use once the electric utility company shows that the meter in question tested as accurate.

8. *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 90 (Order entered March 4, 1980), 1980 WL 140964 (Pa. P.U.C.) citing *Hallifax v. O & A Electric Cooperative*, Case No. U-5825, May 7, 1979, and *Oleander v. The Detroit Edison Company*, Case No. U-5878, May 7, 1979.

9. Docket No. 5046, Order of 2/3/87, at 10.

acknowledged the problematic nature of establishing an evidentiary standard that is fair and appropriate with respect to evidence of meter accuracy. At that time the Board stated: "Before we lay this subject to rest, however, we will examine the questions of what can go wrong with an electric meter and whether it can correct itself by establishing an investigation into the operation and accuracy of electric meters."¹⁰ However, to date, no such Board investigation has been undertaken, notwithstanding the fact that the Board policy continues to rest on the assumption that electric meter tests definitively show that the meter worked properly at an earlier time. Nor has the Board yet reconsidered the ramifications of allowing the accuracy of the meter, as evidenced by testing done at some point in time after the possible malfunction, to be, in effect, the sole criterion available for resolving meter related billing disputes.

In this case, CVPS did not present sufficient evidence to meet the standard set out in Docket No. 5046. After review of the record, I am persuaded that there is equally compelling evidence to support two disparate conclusions, i.e., that Mr. Polya did not use 350 kilowatthours of electric power during the April/May period, and that CVPS' meter was accurately recording Mr. Polya's electric power use during the April/May period. Both Mr. Polya and CVPS appear to be unable to identify the reason for the discrepancy between the observed actual use of electric power and the meter reading.

In his petition, Mr. Polya has asserted that, in those cases where it "cannot be established where the error lies," the Board should order the utility company and the customer to share equally the responsibility for the cost of the discrepancy. He further specifically requested that the Board require CVPS to split with him "the cost between the meter reading and the consistent typical usage" at his residence.¹¹ I find this outcome reasonable and fair, and I recommend that the Board adopt it.

10. Docket No. 5046, Order of 2/3/87, at 10.

11. Petition at 2.

IV. CONCLUSION

For the reasons discussed above, I conclude that the relief requested by Mr. Polya here is appropriate. The Board should grant Mr. Polya's request and order CVPS and Mr. Polya to bear equally the cost attributable to the discrepancy between the April/May meter reading and the consistent typical electric power usage at Mr. Polya's residence.

I further recommend that, either in this docket or a different proceeding, the Board reconsider its determination that "as a matter of law . . . a meter which tests accurate is conclusively established to have been accurate previously."¹² Finally, I recommend that in the case of billing disputes, the Board adopt a policy to consider not only evidence of the accuracy of a meter, but also any other relevant facts or circumstances that may appropriately bear upon a determination concerning the cause of a disputed meter reading.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 27th day of July, 2004.

s/Judith M. Kasper

Judith M. Kasper, Esq.
Hearing Officer

12. Docket No. 5046, Order of 2/3/87, p. 10.

V. BOARD DISCUSSION

This case presents an opportunity for us to review the policy established in Docket No. 5046 regarding evidence to be considered in meter-related billing disputes. Under that policy, a customer is foreclosed from presenting evidence relevant to a claim of overbilling if the utility company shows that the customer's meter tested accurate, and that the customer had the potential to use the electric power as measured by that meter. The Hearing Officer has recommended that we reject that policy and, instead adopt an approach consistent with that of the Pennsylvania Public Utility Commission as set out in *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 90 (Order entered March 4, 1980). *Waldron* allows for consideration of any evidence that is relevant to a determination about whether a meter might or might not have accurately reflected a customer's use of electric power, notwithstanding the fact that the meter tested as functioning properly. We herein adopt the *Waldron* approach.

Comments on the Hearing Officer's Proposal for Decision ("PFD") were filed by both CVPS and the Department. CVPS objected to the Hearing Officer's conclusions concerning the proposed policy change, and suggested that "changing such a long-standing policy requires an investigation with all utilities participating."¹³ By contrast, the Department recommended that the Board approve the PFD, and that the Board reconsider the recommended policy change in this docket rather than opening a new generic investigation.¹⁴

We recognize that proof of accurate operation of a meter after it registers an unusually high reading is very persuasive evidence that the meter was accurate prior to its being tested. However, as demonstrated by the facts in this docket, it is *possible* that a meter might not accurately record the amount of electric power used by a customer, even if that meter tests as accurate after the fact. Also, as noted by the Department, even when a customer has adequate potential to use the amount of electric power measured by a meter that tested as accurate,

13. Letter of Helen M. Fitzpatrick, 7/23/04.

14. DPS Comments on Proposal for Decision, 7/23/04 at 1.

"circumstances may exist, in which there are other possible explanations for high use. . . ."15 These explanations might show that the utility (instead of the customer) should be responsible for the high reading, or, as suggested by the petitioner in this docket, there may be no explanation sufficient to attribute the responsibility for the high reading to either the customer or the utility company.¹⁶

Under the policy set forth in Docket No. 5046, a customer would be required to bear the cost of a possibly inaccurate meter reading unless she could offer *direct* proof that the meter was inaccurate. The policy change we implement today simply affords a customer an opportunity to present circumstantial evidence on the question of the meter's accuracy. Presentation of such circumstantial evidence will not obligate the Board to credit such evidence or give it any special weight.¹⁷ Accordingly, we conclude that it is not necessary to open a generic investigation to consider the policy change here.¹⁸

We therefore hold, consistent with *Waldron*, that evidence that a meter tested as accurate should be weighed with all other evidence relevant to a determination about whether a meter might or might not have accurately reflected a customer's use of electric power. This holding does, however, create a tension between two concerns: (1) economic harm to users who might be able to prove an error in a meter reading; and (2) the costs and delays of litigation caused by dissatisfaction with meter readings that may well be legitimate. To balance, or ease, this tension and reduce the likelihood of customers litigating relatively minor instances of alleged overbilling, we hold that application of the *Waldron* approach shall be entertained only in those cases where

15. DPS Comments on Proposal for Decision, 7/23/04 at1-2.

16. The Department supported adoption of the PFD for two additional reasons. First, the Department stated that under the current evidentiary standard, it could do very little to assist consumers seeking recourse for high billings attributed to an unexpected spike in recorded electric power usage. In addition, the Department noted that, under the current standard, utilities have no incentive to settle these cases. DPS Comments on Proposal for Decision, 7/23/04 at 3.

17. *See, Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (2001).

18. In addition, our adoption of the contrary policy in Docket No. 5046 was in the course of resolving a specific customer complaint, and not the result of a generic investigation.

the customer's bill reflects a meter reading that is more than 50% higher than the reasonably expected meter reading for each disputed billing period.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendations of the Hearing Officer are adopted.
2. Central Vermont Public Service Corporation ("CVPS") shall adjust its bill to Mr. Lance Polya for the period April 13, 2002, through May 16, 2002 ("April/May period"), to such an amount that splits equally between CVPS and Mr. Polya the cost attributable to the discrepancy between the April/May period meter reading and the consistent typical electric power usage at Mr. Polya's residence.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 30th day of September, 2004.

s/Michael H. Dworkin)	PUBLIC SERVICE BOARD OF VERMONT
)		
s/David C. Coen)	
)		
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: September 30, 2004

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.