



unsuccessful attempts to settle, at which point the hearing resumed on May 4, 2011. Id. At the conclusion of the testimony that day, ALJ Pelios adjourned the matter to again provide Petitioner the opportunity to bring witnesses and secure counsel. The hearing concluded on July 27, 2011, with Petitioner foregoing the assistance of counsel and providing solely her own personal testimony.<sup>2</sup>

ALJ Pelios issued his Initial Decision on August 25, 2011, dismissing the petition. Ms. Westbrooks filed exceptions on November 10, 2011 indicating that she disagreed with the decision.

### DISCUSSION AND FINDINGS OF LAW

After review and consideration of the entire record, the Board HEREBY FINDS that the findings and conclusions of ALJ Pelios are reasonable and accordingly, HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the petition be dismissed

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.

N.J.A.C. 1:1-18.4(b).

As stated above, Petitioner's exceptions simply indicate that she disagrees with the decision but fail to delineate the specific findings of fact, conclusions of law or dispositions with which she 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 her exceptions as being without merit.

Petitioner bears 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 issues: 1) Whether Petitioner was properly charged for electricity usage under her own account ("Westbrook account") at 2700 Spruce Drive ("2700 Spruce") from September 2008 through May 2009; and 2) whether Petitioner was properly held responsible for the past undue balance of her daughter, Delores Scott ("Scott"). For the following reasons, Petitioner was properly billed under the Westbrook account and the Scott account.

ALJ Pelios made sound, credibility determinations and relevant factual findings which supported his determination that the petition be dismissed as a matter of law. If a hearing has been held

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July 27, 2011 transcript is designated as "3T".

<sup>2</sup> In accordance with N.J.A.C. 1:1-14.6(l) and in light of Petitioner's pro se status, ALJ Pelios reversed the order of the proceeding and required Respondent to present its case first rather than Petitioner who held the burden of proof.

before an ALJ, neither an agency head nor a reviewing court should disturb the ALJ's credibility determinations, "made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. N.J. Dep't. of Human Servs., 184 N.J. 367, 384 (2005), citing, Clowes v. Terminix International, Inc., 109 N.J. 575, 587-58.

The outstanding balance under the Westbrook account stems from an account Petitioner opened in her name in 2008. Specifically, Petitioner established service in her name at 2700 Spruce on September 5, 2008, which was later disconnected on May 13, 2009 for nonpayment. ID at 4.<sup>3</sup> At the time Petitioner's service was disconnected, Petitioner owed \$3,860.23 directly attributable to her utility usage under the Westbrook account. During the time that account was open, Petitioner made only two payments totaling \$446.00. ID at 4.

The portion of Petitioner's unpaid balance which was transferred to the Westbrook account from Scott, totaled \$5,643.80 at the time her service was disconnected. The transferred balance comprised an outstanding bill for service in Scott's name at 2700 Spruce from September 2005 through April 2008<sup>4</sup>. Subsumed within that balance, was an amount due on Scott's account at neighboring 2755 Ridgeway Road ("2755 Ridgeway"), for service provided under that account through March 2009.<sup>5</sup> The entire Scott balance became the responsibility of Petitioner when she agreed to pay it as a condition of establishing the Westbrook account. The arrangement required Petitioner to pay the transferred balance in installments along with her current service bill.<sup>6</sup> Respondent explained to Petitioner the provision in Respondent's Tariff that allowed it to assign Scott's balance to the Westbrook account. (3T 23:14-18).

Although there was a 2700 Spruce account in Scott's name from September 2005 through April 2008, Scott never resided there. ID at 5. In fact, Petitioner submitted a falsified lease to Respondent listing Scott as a 2700 Spruce tenant in order to obtain electricity at that address. ID at 3. Prior to that, service at 2700 Spruce was in the name of Petitioner's granddaughter but was terminated when Respondent investigated and determined that the granddaughter was a minor. ID at 5. While 2700 Spruce was without electricity from April 2008 through September 2008, Petitioner paid someone to unlawfully reconnect the electricity at that residence. ID at 5; (2T 46:4-8). Petitioner has used 2700 Spruce as her address on her driver's license. (3T 40:18-19)

The Scott 2755 Ridgeway account was established when an account at that address in the name of Louise Kearney ("Kearney"), Petitioner's mother, was disconnected for non-payment. ID at 5. The Scott 2755 Ridgeway account was suspended in March 2009 for non-payment. ID at 5,6. In the normal course, Respondent transferred the Scott 2755 Ridgeway account balance to the Scott 2700 Spruce account. ID at 6. Kearney owned Spruce and Ridgeway at all times relevant to this action, and Petitioner used 2755 Ridgeway as her mailing address and lived there from time to time. ID at 5. (3T 34:19-24). Petitioner also testified that she has a driver's license listing 2755 Ridgeway as her address. (3T 40:18-20).

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<sup>3</sup>Prior to opening the September 2008 Westbrook account, Petitioner tried to put the service in the name of her mother, Louise Kearney, but service was denied. (2T 110: 6-10).

<sup>4</sup> The Scott Spruce account was disconnected for non-payment. ID at 5.

<sup>5</sup> The Scott Ridgeway account was disconnected for non-payment and the balance was then transferred to the Scott 2700 Spruce account. ID at 6.

<sup>6</sup> Petitioner repeated several times during the hearing that she would never pay the bill. (3T 12:23-25; 3T 39:7-11).

A utility has the right to suspend, curtail or discontinue service for non-payment of a valid bill furnished at a present or previous location; tampering with any facility of the utility or fraudulent representation in relation to the use of service and failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff, to state a few. N.J.A.C. 14:3-3A.1. ALJ Pelios found by a preponderance of the evidence that Petitioner had violated all four provisions. Based on a review of the record, that finding is reasonable and consistent with the evidence.

Petitioner held the burden of proof in this dispute but she failed to present any evidence indicating that her current bill or the transferred balance was not owed by her. To the contrary, Petitioner's only argument was that she refused to pay the bill, could not afford the bill, and should not be held responsible for her daughter's bill. (3T 12: 23-25; 3T 22:12-16; 3T 13:22-23; 3T 39:7-11; 3T 10:4-7).

But Petitioner was complicit in creating the Scott 2700 Spruce Account. That account came into existence only after Petitioner submitting a falsified lease to Respondent with the intent to deceive it into believing that Scott lived there although she never did. ID at 5. In addition, Respondent dealt with Petitioner with regard to both the 2700 Spruce and 2755 Ridgeway accounts, regardless of the name on the account. ID at 6. Under those circumstances, there can be no doubt that Petitioner is responsible for the Scott 2700 Spruce and Scott 2755 Ridgeway bills.

Furthermore, Respondent produced three witnesses who testified about their lengthy and comprehensive investigation which revealed with a reasonable degree of certainty, that Petitioner was violating section 2.04 of Respondent's Tariff. The witnesses provided testimony concerning the establishment by Petitioner and her family of several electric accounts under the names of different family members at four residences all owned by Kearney, including 2755 Ridgeway and 2700 Spruce. The evidence established that when one account was closed for non-payment, another would open in the name of another relative. This pattern spanned several years and involved the names of many generations of Petitioner's family members, including Petitioner's minor granddaughter. ID at 5. Even at the time of the hearing, Petitioner admitted that her current electricity account was in her mother's name although Petitioner did not live with Kearney. Petitioner testified that her uncle was complicit in arranging that account. (3T 50:8-16; 3T 42:6-9).

The tariff represents the legal document controlling Petitioners' contractual claims. Application of Saddle River, 71 N.J. 14, 23 (1976). The tariff expressly allows Respondent to discontinue or deny service to an applicant who is a member of a household of a former customer who is indebted to Respondent if the Respondent has reason to believe that substantially the same household will or does occupy the premises and that the purpose of the application is to circumvent payment. If the household is not the same, Respondent can transfer the outstanding balance owed at the prior location. Tariff of Jersey Central Power & Light, section 2.04. Respondent provided substantial evidence that Petitioner violated the Tariff.

Furthermore, Petitioner agreed to take on the transferred amount as a condition of service when she applied for service in September 2008. (3T 21:14-20; 3T 26:17-22). It was not until her service was disconnected almost a year later for non-payment of the current bill and the past due amount that Petitioner disputed her responsibility for the transferred balance. (3T 22:6-11).

Finally, the ALJ correctly dismissed Petitioner's claim that she was entitled to continue receiving electricity on account of medical need. ID at 6. Mr. Howlett ("Howlett"), who works in Respondent's Compliance Department, testified that state law requires a utility to stay disconnection of residential electric service for 30 days if the customer presents a physician's certificate indicating that there is a medical emergency. (2T 36:3-8). A customer is entitled to two 30-day stays within a twelve month period. (2T 37:2-5). Howlett testified that Petitioner presented Respondent with two medical certifications in November 2008 and February 2009 and Respondent granted a 30-day stay in both instances. (2T 37:2-7). However, Respondent's Supervisor of Revenue Collections, John Shields, testified that Petitioner did not have an active medical certificate on file at the time her service was disconnected on May 13, 2009. (2T 85:22-25).


Petitioner simply did not meet her burden. Aside from refusing to pay the bill, she failed to present any credible testimony to rebut Respondent's evidence confirming that the electricity bill was valid, that Petitioner was personally responsible for the obligation and that Respondent had a legal right to discontinue her service.


### DECISION

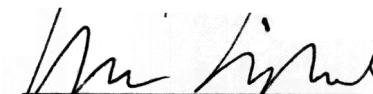
Upon careful review and consideration of the record, the Board HEREBY FINDS that the factual determinations and legal conclusions of the ALJ are reasonable and based upon sufficient, competent, and credible evidence. The Board HEREBY ADOPTS the Initial Decision in its entirety and HEREBY ORDERS Petitioners' complaint to be DISMISSED.

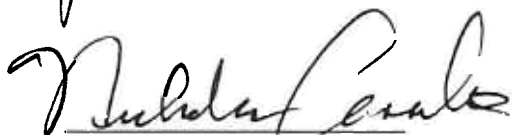
DATED: 3/12/2012

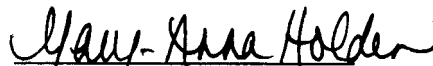
BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

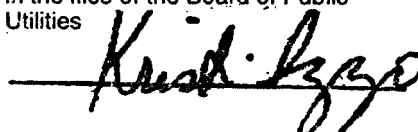
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
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



ERNESTINE WESTBROOKS

V.

JERSEY CENTRAL POWER & LIGHT COMPANY

BPU DOCKET NO. EC09060443U

OAL DOCKET NO. PUC06361-09

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

**INITIAL DECISION**

OAL DKT. NO. PUC 06361-09

AGENCY DKT. NO. EC09060443U

**ERNESTINE WESTBROOKS,**

Petitioner,

v.

**JERSEY CENTRAL POWER & LIGHT COMPANY,**

Respondent.

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**Ernestine Westbrook**, petitioner, pro se

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

Record Closed: July 27, 2011

Decided: October 24, 2011

BEFORE **ELIA A. PELIOS**, ALJ:

**STATEMENT OF THE CASE**

Ernestine Westbrook ("petitioner") contends she was improperly deemed by Jersey Central Power & Light ("JCPL" or "respondent") to be responsible for the payment of an account for electric service in the name of a relative. She claims her service was improperly terminated for non-payment and seeks to have service restored to her home.

**PROCEDURAL HISTORY**

Petitioner filed a Petition with the Board of Public Utilities on May 19, 2009. JCPL filed an Answer to the Petition, which was received by the Board on July 17, 2009.

The Board transmitted the matter for a formal hearing to the Office of Administrative Law, where it was filed on August 18, 2009. A hearing was scheduled to be held on May 18, 2010. The proceedings were begun on that date, but were aborted prior to the first witness presenting any testimony due to petitioner's apparent confusion as to whether she was allowed to have witnesses present to speak on her behalf.

The proceedings were adjourned that petitioner could gather witnesses and perhaps consult counsel. After a number of conference calls between the parties and a period of time where the matter appeared likely to settle, the matter resumed and a hearing was held on May 4, 2011. At the conclusion of respondent's case, the proceedings were again adjourned to accommodate petitioner's request to provide witnesses. The matter continued on July 27, 2011, with no witnesses presented by petitioner other than herself. The matter was concluded and the record closed on that date.

**FINDINGS OF FACT**

At hearing, Petitioner offered no exhibits into evidence and called no other witnesses but herself. Her testimony was limited to a brief statement that her mother, Louise Kearney, had a house, and her daughter, Dolores Scott, owned a house. Petitioner did not own a house, had a boyfriend and stayed "wherever I wanted to." Petitioner used her daughter's address for receiving a medical benefit and lived with her daughter on and off. She believes she should not be responsible for her daughter's unpaid electric bill as a condition of getting service in her own name.



On ~~cross-examination~~, petitioner acknowledged that service was established in her name at 2700 Spruce Drive, Manchester, NJ, in September, 2008, only after she entered into an agreement to accept responsibility for an outstanding service bill for an account at 2755 Ridgeway Road and make payment toward that outstanding balance. Her service was turned off in 2009 after she failed to make any payment to the current bill or the previous balance. Petitioner acknowledged that respondent properly transferred the account in the name of Dolores Scott at 2755 Ridgeway Road to the account of Dolores Scott at 2700 Spruce Drive, which petitioner took responsibility for when she reestablished service in her own name at Spruce Drive.

Petitioner acknowledged that her mother, Louise Kearney, owned and lived at both 2755 Ridgeway Road and 2700 Spruce Drive, and that petitioner has used Ridgeway Road as a mailing address. Petitioner attempted to have service at Spruce Drive put into her mother's name. Her mother owned four properties, all on the same block, 2651, 2699 and 2700 Spruce Drive and 2755 Ridgeway Road.

~~Petitioner~~ stated that in order to get lights turned on for her mother while residing at 2700 Spruce Street, a lease was fabricated to show that her daughter, Dolores Scott, lived at that address so that service could be turned on in her name. Dolores Scott never lived at 2700 Spruce Drive. "I don't mind saying it, I lied." Petitioner states that the fraud was necessary to continue to provide electric service for her mother, and that she would do whatever she had to in order to make that happen.

Petitioner's mother had accounts at both the 2700 Spruce Drive and 2755 Ridgeway Road address which had been terminated for nonpayment. Petitioner currently lives at 4 Edinberg Lane. Her electric service there is in the name of her mother, ~~who does~~ not reside at that address.

~~Respondent~~ presented several exhibits and offered the testimony of Charles Howlett, John Shields and Amy Gibbs. Collectively they illustrated a picture of a long and winding ~~history regarding~~ petitioner's account involving petitioner, her mother, her

daughter, and other family members whereby the various members would arrange service for the various premises, fail to make payment, make payment arrangements to forestall termination of service, continue to fail to make payment, and, once termination has occurred, establish service in the name of another family member.

The witnesses also testified to the procedures followed by respondent in handling the matter, the efforts undertaken to avoid shutoff, the arrangements entered into and the multiple chances offered respondent offered and entered into in order to avoid a shutoff.

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

- 1) Service was established in the name of petitioner at 7700 Spruce Drive, Manchester, NJ on September 5, 2008 and remained in effect until May 13, 2009.
- 2) Petitioner's account was terminated on May 13, 2009 for non-payment.
- 3) During the period service was being provided to petitioner's account, petitioner made two payments; one on September 9, 2008 in the amount of \$246.00 and one on March 6, 2009 in the amount of \$200.00.
- 4) Petitioner has entered into a minimum of two (2) payment agreements with respondent and has not complied with either.
- 5) As a condition for establishing service to the premises in the name of petitioner, petitioner accepted responsibility for payment of an outstanding balance in the amount of \$6,089.80) for service to the same premises incurred under the name of Dolores Scott.

- 6) Concurrent with petitioner's accepting responsibility for the account and establishing service in her name, petitioner made payments approximately in the amount of \$2,200 toward her daughter's outstanding balance.
- 7) At the time petitioner's service was terminated in May, 2009, her account had a balance of \$3,860.23 while a balance remained on the portion attributed to her daughter in the amount of \$5,643.80.
- 8) The account in petitioner's daughter's name for the premises was in service from September 8, 2005-April 29, 2008.
- 9) Dolores Scott, petitioner's daughter, never resided at the subject premises.
- 10) In order to establish service in petitioner's daughter's name, petitioner provided respondent with a fraudulent lease purporting to demonstrate that her daughter rented and resided at the subject premises.
- 11) Service was established in petitioner's daughter's name after respondent terminated service to the premises in August, 2005 when an investigation determined that the service was being provided in the name of a minor child; petitioner's granddaughter.

Service was also established in the name of petitioner's daughter at a nearby (.1 mile, per R-15) property, 2755 Ridgeway Road, after service was terminated to that property in the name of petitioner's mother for non-payment.

Both the Ridgeway Road and Spruce Drive properties were at all relevant times owned by petitioner's mother. Petitioner's daughter's service to the Ridgeway Road property was terminated for nonpayment in March

2009, and the balance migrated to petitioner's daughter's account at Spruce Drive.

During the time when service was terminated in petitioner's daughter's name and established in petitioner's name, service was reconnected to the Spruce Drive property without authorization of respondent.

Respondent dealt directly with petitioner with regard to all accounts herein described, regardless of the name on the account.

Although petitioner alleged through cross-examination the existence of medical need for electric services to be provided to the premises, petitioner offered no credible evidence either of medical need or of any attempt to provide notice of any such need to respondent, beyond assertion at cross-examination. Further, Mr. Shields testified credibly that respondent had no documentation for any medical condition at 2700 Spruce Drive.

### **CONCLUSIONS OF LAW**

N.J.A.C. 14:3-3A.1 provides that the utility "shall have the right to suspend or curtail or discontinue service for any of the following reasons:"

3. For nonpayment of a valid bill due for service furnished at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2;
5. For any of the following acts or omissions on the part of the customer:
  - ii. Tampering with any facility of the utility;
  - iii. Fraudulent representation in relation to the use of service;

viii. Failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff;

[N.J.A.C. 14:3-3A.1.]

In the current matter, the record demonstrates, by a preponderance of the evidence and largely by admission of petitioner, that the valid bills for service were not paid, in violation of N.J.A.C. 14:3-3A.1(3); that respondents' facilities were tampered with, in violation of N.J.A.C. 14:3-3A.1(5)ii when service was reconnected without authorization; and that petitioner made fraudulent representations in relation to the use of service, in violation of N.J.A.C. 14:3-3A.1(5)iii when she provided a fraudulent lease to respondent to establish service in the name of a an individual who never resided at the premises.

Furthermore, respondent's Tariff for Service provides, at section 2.04, that respondent:

may refuse to initiate service or may discontinue service to an applicant...who is a member of the household...of a former customer then indebted to the Company for Services provided by the Company at any location, if the company has reason to believe that substantially the same household will or does occupy the premises to be or being served and that the purpose of the present or earlier application is or was to circumvent the payment of such indebtedness...[I]f the household...is not the same the company can only transfer the outstanding balance of amounts owed to the company for services provided by the company to the former customer of record for service rendered at the prior location.

The burden of proof rests with the petitioner, as the party seeking relief, to demonstrate by a preponderance of credible evidence that the household in question is not the same. **CONCLUDE** petitioner has not met this burden. The proceedings were adjourned at least twice to allow petitioner to produce witnesses who never

materialized; petitioner offered no documentary evidence to refute respondent's belief that the households were the same, nor did she offer any testimony to refute the findings, other than to assert that she does not believe she should be responsible for a bill that was her daughter's and will never pay it. To the contrary, the tariff makes clear that in certain events she can be so responsible.

Petitioner admitted under oath that she agreed to be held responsible for payment of the prior bill in order to establish service in September 2008. Petitioner also provided sworn testimony that she provided fraudulent information to respondent in 2005 in order to establish service in her daughter's name, which raises the question as to whether it is in fact her daughter's bill she is being asked to account for or in fact her own.

Despite not having the burden of proof, respondent did take efforts to establish many facts of this case, proceeding first with its case. Despite possessing a presumption of validity of its actions, respondent took care to demonstrate and lay out the thought process leading to its reasonable belief that service was being established for the same household at 7700 Spruce Street. That petitioner's mother has resided or had service in her name at both residences merely underscores the finding that the service requested is seeking to provide service in the name of another of the same household for purposes of avoiding the debt. To establish service now in the name of petitioner's mother would only serve to continue the cycle.

Accordingly, I **CONCLUDE** that respondent took reasonable action in terminating service to 7700 Spruce Street and that petitioner is responsible for payment for electric service as billed to her account. Petitioner has failed to meet her burden in proving otherwise. Petitioner's appeal should be **DENIED**.

### ORDER

Based on the foregoing, I hereby **ORDER** that petitioner's appeal be **DISMISSED** with prejudice. Petitioner is **ORDERED** to remit payment to JCP&L for \$9,504.03 due and owing on her account or to make reasonable arrangements with JCP&L for

repayment. Absent such payment or reasonable arrangement, JCP&L, pursuant to section 2.04 of its tariff, is within its rights to continue to deny service to the household.


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.

October 24, 2011

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**ELIA PELIOS, ALJ**

October 24, 2011

Date Received at Agency:

Date Mailed to Parties:

/mamf

**LIST OF EXHIBITS IN EVIDENCE**

**For Petitioners:**

None

**For Respondent:**

- R-1 Initial Complaint
- R-2 Supplemental Response
  - Initial Complaint
  - Initial Complaint
- R-5 Initial Complaint
- R-6 Detailed Statement of Account
  - Initial Complaint
- R-8 Email Correspondence
- R-9 Bills
- R-10 Detailed Statement of Account
- R-11 Detailed Statement of Account
- R-12 Contract
- R-13 Record
  - Record
  - Google Map
  - Statement of Account
  - Screen Capture of Person Search
  - Account Statement



**LIST OF EXHIBITS IN EVIDENCE**

**For Petitioners:**

None

**For Respondent:**

- R-1 Initial Complaint
- Supplemental Response
- Initial Complaint
- R-4 Initial Complaint
- R-5 Initial Complaint
- Detailed Statement of Account
- Initial Complaint
- Email Correspondence
- Bills
- R-10 Detailed Statement of Account
- ~~R-11 Detailed Statement of Account~~
- ~~R-12 Contract~~
- R-13 Record
- R-14 Record
- R-15 Google Map
- R-16 Statement of Account
- R-17 Screen Capture of Person Search
- Account Statement