



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

CUSTOMER ASSISTANCE

FRANK AND BARBARA GRAZIOLI,
Petitioners,

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent.

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ORDER ADOPTING INITIAL
DECISION IN PART AND
MODIFYING IN PART

BPU DOCKET NO. GC13070633U
OAL DOCKET NO. PUC 12615-13

Parties of Record:

Frank and Barbara Grazioli, appearing pro se
Amanda Johnson, Esq., appearing on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD¹:

PROCEDURAL HISTORY

Petition

On July 12, 2013, Frank and Barbara Grazioli (Petitioners) filed a petition with the Board of Public Utilities (Board) disputing electricity bills from Public Service Electric & Gas Company (PSE&G or Respondent) for service to their Maple Shade, New Jersey residence. Petitioners claimed that there might be "over-billing, unreliable metering, and possible diversion of service that is being ignored" for the past three years. Petitioners requested that an investigation be done on both gas and electricity meters, as well as an investigation into an alleged diversion of service.

Answer

Respondent filed an answer on August 7, 2013, arguing that the petition failed to state a claim upon which relief can be granted because Petitioners were billed the appropriate rates for the correct amount of usage for utility services for its account(s) during the three-year period. Respondent asked that the relief sought by Petitioners be denied and the petition be dismissed.

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

On September 4, 2013, the Board transmitted this matter to the Office of Administrative Law (OAL) for a hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A telephone prehearing conference was conducted by Administrative Law Judge (ALJ) Robert Bingham II on January 10, 2014, and a prehearing order was issued on January 15, 2014. At the time, only Frank Grazioli was listed as a petitioner; his wife, Barbara Grazioli, was added as a petitioner by consent.

After several adjournments, this case was transferred to ALJ Jeff S. Masin in early October 2014. On October 14, 2014, ALJ Masin held an evidentiary hearing in which Petitioner Barbara Grazioli testified on behalf of her and her husband, and James Walsh, a Senior Customer Relations Consultant, testified on behalf of PSE&G.

October 14, 2014 Hearing

Grazioli testified that she was contesting her electricity bills from May 2012 until November 2012 for her residence and is not contesting her gas bills. (T5:23-6:7; T14:3-7). She described that her residence is a two-story single family home, without cooling or central air-conditioning. (T7:20-8:8). She testified that the make-up of her home has not changed throughout the time from 2010 to the time of the hearing. (T49:15-20). Grazioli claimed that a third-party meter testing was requested verbally. (T58:22-59:15; T62:17-20). Grazioli admitted that she did not have any basis or suspicions as to whom or under what circumstances anyone might have been diverting her electric service. (T62:25-63:11).

Walsh, who has been working for the PSE&G over thirty-six years and was familiar with Petitioners' case, testified that PSE&G investigated Petitioners' concerns by creating account statements, detailing specific consumption, and changing, checking, and testing the gas and electric meters for accuracy. (T11:1-23). Walsh testified that the accuracy level of the electric meter was 100.66 percent, which falls within the Board regulated range, which is 100 percent to 102 percent. (T14:11-19; Exhibit R-1, Meter Information). Based on this result, Walsh testified that the electric meter was working accurately. (T14:20-23). Walsh then described how he reviewed the Petitioners' account statement and stated that there were no obvious errors or anything that he determined to be the cause of the running balance of the Petitioners' account, other than lack of payment. (T18:10-22; Exhibit R-2, Accounting Statement). In assisting Petitioners to pay off the remaining balance, Walsh testified that Petitioners were enrolled in an installment plan called the Deferred Payment Arrangement (DPA). (T19:11-23). Walsh explained that a DPA is entered into with the customer's past due bills. (T19:24-20:3). He further explained that under a DPA, the customer is allowed to have one payment per year that is broken or else the total amount becomes due and no further arrangements are made. (T2:2-6). On March 11, 2011, Petitioner entered into a DPA. (R-2). On June 22, 2011, the installment plan was broken. (T20:25-21:3; R-2). Another installment plan was entered into on June 30, 2011. (T21:7-12, R-2). On September 25, 2012, the installment plan was again broken. (T21:22-22:2). In addition, there were no payments for four months within the 2013-2014 period and seventeen underpayments. (T29:7-20). Walsh testified that "[w]hat caused the current balance in Petitioners' account was lack of payments versus consumption." (T34:15-22).

On cross-examination, Walsh stated that a request for a diversion service investigation was made and that John Fowler, a field service investigator from PSE&G, went to the residence and investigated. (T36:24-37:22). Walsh testified that Fowler inspected the outside of the home and found no diversion. (T38:1-39:5). Walsh stated that diversion of service or theft of service is shown typically in multi-family units, and a service line, which would be generally noticeable,

would be coming from one physical property extending to another physical property. (T43:16-45:15).

On November 21, 2014, PSE&G provided, among others, certifications attesting to the authenticity of the electric and gas meter test results, and a letter from the New Jersey Office of Weights and Measures approving PSE&G's compliance with applicable regulations regarding testing of the equipment used to test Petitioners electric and gas meters in April and June of 2013. (R-3).

The record was closed on November 24, 2014. On November 25, 2014, an Initial Decision was issued, dismissing the petition. ALJ Masin found the following comparison of the electric bills rendered for the months of May through December 2011, and the disputed months of May through December 2012:²

	<u>2011</u>	<u>2012</u>
May	\$80.08	\$118.01
June	\$132.38	\$220.55
July	\$170.96	\$300.77
August	\$174.08 (estimated)	\$243.40
September	\$102.44	\$181.58
October	\$95.23	\$126.45
November	\$108.07	\$117.00
December	\$135.13 (estimated)	\$180.86

(Initial Decision 2-3).

No party filed exceptions to the Initial Decision.

DISCUSSION AND FINDINGS

In this administrative proceeding, Petitioners bear the burden of proof by a preponderance of the competent, credible evidence as to those matters that are justifiably before the OAL. See Atkinson v. Parksekian, 37 N.J. 143, 149 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tended hypothesis, in all 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. 1:1-18.6(c) and N.J.S.A. 52:14B-10 both provide that an agency may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are "arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record."

The Petitioners must establish their contention that the billings are not proper by a preponderance of the credible evidence. (Initial Decision 3) ALJ Masin found from the evidence³ that the electric meter was properly tested and it was 100.660 percent accurate,

² While Petitioners' testimony only concentrated on the electric bill for the months of May through November 2012, at the hearing, they requested the comparison be extended to include mention of the bills for December 2011 and December 2012. (Initial Decision 2-3). The Board notes that the petition questioned the accuracy of the bills for a three year period which would be inclusive of 2011.

³ Pursuant to N.J.A.C. 14:3-4.5 and 14:3-4.6, ALJ Masin found that the exhibit R-1, a report of the meter

which meets the regulatory test for accuracy such that no adjustment to bills is required under the test regulation, N.J.A.C. 14:3-4.6. (Initial Decision 8)

The ALJ found that Petitioners' argument that the increases in their electricity bills must be a result of a faulty meter, or of a diversion of electricity is "purely speculative, and not an explanation that can survive the scrutiny." (*Ibid*) The Petitioners had no evidence at all to support the diversion theory. Further, the PSE&G's records do not show any observation that a diversion was occurring.

As to the lack of a third-party test argument, the ALJ found that the notice of the witness option should have been provided at the time the meter was removed for testing in April 2013 since the PSE&G had enough information to treat the matter as one where the bills were being questioned. N.J.A.C. 14:3-4.5(c). Despite the alleged procedural violation of the notice requirement, the ALJ found that there is no reason to believe that a witnessed test would have resulted in a different outcome because the testing was performed by a technician, who certifies to his experience and qualification to perform the test, and the testing equipment has itself been tested and found accurate by the Division of Weights and Measures. (Initial Decision 10; R-3).

Further, ALJ Masin concluded that the bills rendered are accurate reflections of the usage and of the correct billing for that usage. Under the DPA, if the customer has more than one payment per year that is not made according to the terms, the total amount becomes due and no further arrangements are allowed. (*Id.* at 6) As outlined above, based on the account statement, Petitioners had a balance of \$2,571.15 as of February 24, 2011. (*Id.* at 6; R-2) The DPA became effective on March 11, 2011, for twenty-five months that would have paid off that balance. (Initial Decision 6) Plaintiffs broke the arrangement in June 2011, which made the outstanding balance of \$2,358.26 due. (*Ibid*) The DPA was renewed on June 22, 2011 for twenty-four months. (*Ibid*) The arrangement was broken again in September 2012, at which time the outstanding bill was \$1,124.55. (*Ibid*) The payments received after this date did not match the billings, and that resulted in the outstanding balance of \$4,112.31 as of August 27, 2014. (*Id.* at 7) The ALJ agreed with the testimony of Walsh that the reason for the outstanding balance was a lack of adequate payments versus consumption of electricity based upon the testing of the meter, which demonstrated that it was working within the acceptable parameters, and the billing and payment history of the account. (*Id.* at 7, 10) Based upon the foregoing, the ALJ dismissed the petition.

ALJ Masin concluded that (1) the bills rendered are accurate reflections of the usage and of the correct billing for that usage; and (2) Plaintiffs' challenge to the bills fails and the entire balance is owed, in addition to any further billings rendered since the date that remain unpaid.

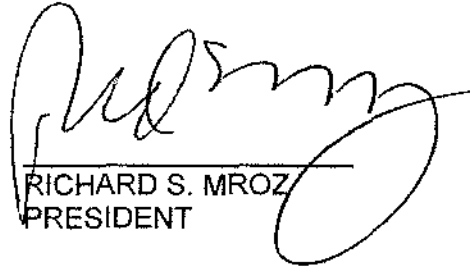
At the outset, the Board notes that the Initial Decision very thoroughly sets forth the factual record, and the Board agrees that the petition should be dismissed as Petitioners failed to prove their case. The Board further agrees with the ALJ's determination that the bills rendered are accurate reflections of the usage and of the correct billing for that usage through August 27, 2014. Therefore, the Board modifies the portion of the Initial Decision which extends beyond August 27, 2014.

test result obtained from testing performed on April 19, 2013, was an insufficient means of demonstrating that the meter testing was properly conducted. (Initial Decision 4-5). But, the ALJ noted that PSE&G supplied the certification made by Barry Baxmeyer, an electric meter technician, who performed the meter test on April 19, 2013, and additional certificates of calibration, which attest to the accuracy of the meter testing equipment. (*Id.* at 5). Based on the certifications and the testimony of Walsh, the ALJ found that the electric meter was working properly and was therefore recording the usage accurately. (*Id.* at 6).

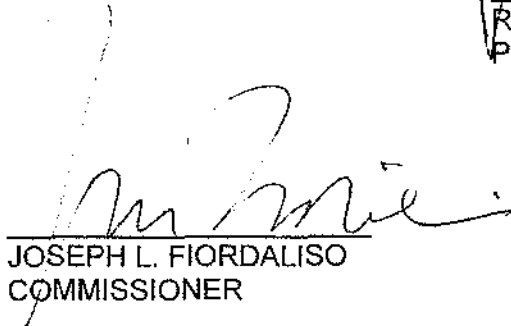
Upon careful review and consideration of the record, the Board **HEREBY ADOPTS** the Initial Decision with a modification as indicated herein and **HEREBY ORDERS** that the petition be **DISMISSED**.

DATED: 1/21/15

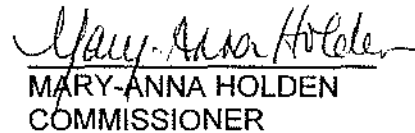
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER

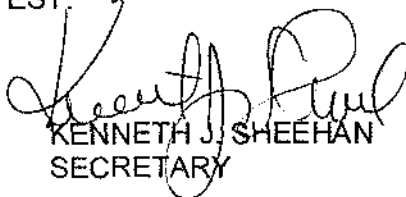


MARY-ANNA HOLDEN
COMMISSIONER




DIANNE SOLOMON
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
SECRETARY

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



FRANK AND BARBARA GRAZIOLI

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. GC13070633U

OAL DOCKET NO. PUC12615-13

SERVICE LIST

Frank & Barbara Grazioli
503 North Forklandng Road
Maple Shade, NJ 08052

Amanda Johnson, Esq.
PSE&G Services Corp.
80 Park Plaza – T5
Newark, NJ 07102-4194

Diane H. Kim, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

Eric Hartsfield, Director
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Julie Ford Williams, Chief
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

Valerie Haynes, Chief
Office of the Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 12615-13

AGENCY DKT. NO. GC13070633U

FRANK AND BARBARA GRAZIOLI,

Petitioners,

v.

PUBLIC SERVICE ELECTRIC AND GAS

COMPANY,

Respondent.

Frank and Barbara Grazioli, petitioners, pro se

Amanda Johnson, Esq., for respondent

Record Closed: November 24, 2014

Decided: November 25, 2015

BEFORE JEFF S. MASIN, ALJ:

Frank and Barbara Grazioli dispute the electric bills they received from PSE&G for their residence in Maple Shade Township for the period from May through November 2012. Their challenge to the bills was filed with the Board of Public Utilities (BPU) on July 12, 2013, and the Commission transferred the contested case to the Office of Administrative Law on September 4, 2013, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A prehearing conference was conducted by Honorable Robert Bingham II on January 10, 2014, and a prehearing order was issued on January 15, 2014. At that time only Frank Grazioli was listed as a petitioner.

Subsequently, Barbara Grazioli was added as a petitioner by consent. The case was originally scheduled to be heard on June 26, 2014. However, on May 1, 2014, the Grazioli's requested an adjournment of the hearing. The request was granted and a telephone conference was scheduled by Judge Bingham to be held on August 26, 2014. However, this conference was apparently adjourned. The case was transferred to this judge in early October 2014, and a hearing was held on October 14, 2014, at which time the record closed. However, I then requested that PSE&G supply certain evidential materials that related to an exhibit admitted into evidence at the hearing. These were supplied on November 24, 2014. Additionally, in response to my direction regarding the submission of these materials, the Grazioli's filed an e-mail dated November 19, 2014.

At the hearing, the Grazioli's expressed concern about both the bills and their WorryFree coverage, which they claimed was suspended due to the investigation of their billing complaint. This decision only deals with the propriety of the bills rendered for service supplied, as the WorryFree coverage issues appear to arise under a contract between the Grazioli's and PSE&G and contract issues are not properly determined in this forum.

A comparison of the electric bills rendered for the property for the months of May through November 2011, and the disputed months of May through November 2012, shows the following:

<u>2011</u>	<u>2012</u>
May-\$ 80.08	\$118.01
June-\$132.38	\$220.55
July-\$ 170.96	\$300.77
August-(estimate)\$174.08	\$243.40
September-\$102.44	\$181.58
October-\$95.23	\$126.45
November-\$108.07	\$117.00

While the Grazioli's have not challenged the bill for December 2012, at the hearing they requested that the comparison be extended to include mention of the bills for December 2011 and December 2012.

December-(estimate)\$135.13	\$180.86
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The Grazioli's residence was described as a single family home, two floors, three bedrooms, one and one-half bathrooms, with no pool and without central air conditioning.

The burden to establish that the charges tendered to the Grazioli's are not proper and that they do not owe the amount demanded by PSE&G rests with the Grazioli's. They must establish their contention that the billings are not proper by a preponderance of the credible evidence.

In order to understand the bills provided to them, once the petitioners, through Ms. Grazioli, had identified the period in dispute, PSE&G presented its witness. James T. Walsh, a Senior Customer Relations Consultant with PSE&G, testified that after the Grazioli's questioned their bill, the electric meter was removed from the property on April 9, 2013. The electric meter was then purportedly tested for accuracy. In this regard, it is noted that the crucial issue in most billing challenges is whether the company's electric meter, which registered the usage at the property, was working properly during the period of time for which the billing is challenged. If the meter is demonstrated to have been accurately recording the usage, the petitioner is extremely unlikely to meet the burden to prove the inaccuracy of the bills rendered even by the limited "preponderance" burden. Both as a result of the regulatory scheme and simply because the meters belong to the utility, the utility is uniquely in a position to both test and offer evidence about the testing. This is particularly true where the residential consumer is appearing pro se. Here, Mr. Walsh produced a document, R-1, in support of the accuracy of the meter. This document was ultimately offered in evidence, and accepted without objection by the pro se petitioners with the understanding, noted by this judge, that even after its admission, it was subject to a determination as to the

weight and credibility that it might have in support of the position offered by the document's proponent, PSE&G. Upon further reflection and after a review of the regulations, I determined that the exhibit presented was an insufficient means of demonstrating that the meter testing was properly conducted.

Meter tests can be requested by a customer. N.J.A.C. 14-3:4.5 provides

- (a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.
- (b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9 Meter records.
- (c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.
- (d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.
- (e) Upon application by any customer to the Board, a Board inspector shall test the customer's meter. Such test shall be made as soon as practicable after receipt of the application for the test, and Board staff shall notify the customer and the utility as to the time and place of such test.
- (f) The Board shall charge a fee of \$5.00 for a meter test, payable at the time application is made for the test. This fee is to be retained by the Board if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, that is, more than two percent, or in the case of water meters, more than one and one half percent, the utility shall reimburse the customer for the test fee paid.

N.J.A.C. 14:3-4.6 provides for an adjustment

- (a) 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.

R-1, the alleged proof that the meter readings were rendered by a properly working electric meter, purports to be a report of the meter test result obtained from testing performed on April 19, 2013. Mr. Walsh testified that he did not perform the test, he did not know who performed the test, and the document was part of the "data base." The "report" itself lists nothing as to who performed the test, does not identify the qualifications or title or position of the person performing the test, and bears no signature or certification. Even assuming that this type of test report is in the form and manner normally maintained within the company's records, which it may well be, the testimony as to this particular issue was non-existent, except that the form came from the data base and was "standard." Although it may be that the accuracy test itself is a very routine and simple test that does not necessarily require that each time such a report of testing is presented at a hearing, the technician who performed the test need appear, nevertheless, the form itself should at the very least contain more information as to who ran the test, his or her title, and a certification as to the results. Absent any of this, while the form may indeed be in the data base and a part of the business records of the company, it is not deserving of much weight. However, as the testing process is routinely used and in the past, it appears that PSE&G and other utilities have supplied additional evidence regarding the tests results, I allowed for the submission of appropriate certifications to supplement R-1. On November 24, I received a certification made by Barry Baxmeyer, an electric meter technician employed by PSE&G, who performed the test of the meter on April 19, 2013, and additional Certificates of Calibration, dated February 6, 2013 and February 21, 2014, which attest to the accuracy of the meter testing equipment, as certified by the New Jersey Division of Weights and Measures, in compliance with regulatory requirements for the testing of such equipment, N.J.A.C. 14:3-4.4.¹

According to the data base, the meter was found to be 100.66 accurate. The Board of Public Utilities regulations require accuracy between 98 and 102 percent. Mr.

¹ Information was also provided about the gas meter, but there is no pending contested case concerning the gas bills.

Walsh thus concluded that the meter was functioning correctly and providing accurate readings of the electricity used by the household. The additional material supplied permits me to **FIND** that the electric meter was working properly and was therefore recording the usage accurately.

A Statement of Account (R-2) was prepared for the property showing actions between May 2010 and August 2014. This Statement records the electric reading type, that is, actual, estimated, or starting with April 26, 2013, after the installation of a new updated meter, ERT, which stands for electronic radio transmission, which is a remote reading made without actual physical observation of the meter, with transmission through a hand-held reader. In addition, the chart shows the index numbers, the metered use and the charges for that usage, the amount billed, which included the charge for gas usage as also shown on the Statement, the charge for WorryFree, "other account activity," which could be payments from an outside agency, such as Home Energy Assistance, and State Assistance Payments. Finally, the chart shows payments made by the customer and the running balance on the account.

Mr. Walsh explained that as the meter was running within acceptable degrees of accuracy, there were no apparent errors that would have affected the charges rendered to the Grazioli's. Walsh then reviewed the charges and payments of one sort or another, including the use of an installment plan under which the customer is to pay the current bill and an additional \$100 a month on the outstanding balance, aside from any subsidy paid directly to the company by the State. This is known as the Deferred Payment Arrangement. Under this plan, if the customer has more than one payment per year that is not made according to the terms of the Arrangement, the total amount becomes due and no further arrangements of this sort are allowed. In the case of the Grazioli's as of February 24, 2011, they had a balance of \$2,571.15. The Deferred Payment Arrangement became effective, for a twenty-five-month-period that would have paid off that balance, on March 11, 2011. The customers broke the arrangement in June 2011, which made the then balance of \$2,358.26 due and owing. However, since this was the allowable one break per year in the Arrangement, it was renewed on June 22, 2011, for twenty-four months. The Arrangement was again broken in September 2012, at which time the outstanding bill was \$1,124.55. The payments

received after this date, from whatever source, did not match the billings, and the result is that as of August 27, 2014, the last date on the chart, the outstanding balance was \$4,112.31.

Charges for electricity are made by kilowatt hour and controlled by the approved tariff. If the electric meter is tested and tests below 98, it means that the meter is running slow; if above 102, running fast.

Based upon the testing of the meter, which demonstrated that it was working within the acceptable parameters, and the billing and payment history of the account, Mr. Walsh concluded that the reason for the balance was simply a lack of adequate payments versus consumption of electricity.

On cross-examination, Ms. Grazioli asked whether an investigation was performed to determine whether electric service to the Grazioli home was being diverted to some other location. Walsh explained that it is very difficult for there to be such a diversion in a one-family house, as opposed to, for instance, a rooming house or a multiple unit structure. If a diversion were occurring from a one-family home such as the Grazioli's to another property, a physical service line would be present, hooked into the Grazioli's own service line. This would be a noticeable item, in the circuit breaker box where the tie-in was made, and/or the line itself running to the other property.

Barbara Grazioli testified that nothing had changed in her house during the time when the bills in dispute or the comparisons from the previous year had been rendered. When she started to notice bills that were getting high, in July 2012, she contacted PSE&G, and was told that her concern would be addressed by a call from someone from the "Expedited Department." Her husband then got sick, was in the hospital, and the bills continued to increase all through 2012. In April the company came to test the meter. Ms. Grazioli did not believe that her consumption could have doubled or tripled in the months at issue, and the cancellation of her WorryFree contract also caused concern due to problems she had with appliances.

Addressing her concern about a possible diversion of electrical service to another property, Ms. Grazioli believed that in 2014, there could be other ways to divert service than through an obvious line such as Mr. Walsh described. She also was concerned that there had been no third-party meter testing. Counsel for PSE&G noted that their file did not indicate that any request had been made for a third-party test. Ms. Grazioli contended that a man named Ed Sullivan at PSE&G was aware that such a test had been requested. Ms. Grazioli confirmed that she had only made such a request orally, to Mr. Sullivan.

Discussion

In this case, the Grazioli's assert that there must be something amiss with the billings they received from PSE&G for the months of May through November 2012. It is true that the monthly charges for the usage monitored by the electric meter at the Grazioli's single-family home did result in higher charges for electricity usage, as shown in the chart above. In her testimony, Ms. Grazioli asserted that nothing had changed in regard to the condition and the use of electricity in the home between 2010 and the end of the disputed period, that is, the end of November 2012. Given this, the petitioners have no explanation of their own why the bills for electricity would have risen so much, and assume then that the blame for such increases must be as a result of a faulty meter, or of a diversion of electricity from their electric line to somewhere else. They have no evidence at all to support the diversion theory. Nothing was observed by the PSE&G employees, or at the very least, the company's records do not show any observation that a diversion, which the testimony indicates would be signaled by a line running from the Grazioli's service to another property, was occurring. The Grazioli's did not identify anyone who might be diverting their electricity service. Thus, the diversion scenario must be seen as purely speculative, and not an explanation that can survive scrutiny.

I **FIND** from the evidence that after its removal in March 2013, the electric meter was tested and it was 100.660 accurate. This level of accuracy meets the regulatory test for accuracy such that no adjustment to bills is required under the test regulation.

As such, on the face of these test results, it would appear that the meter readings were accurate. As PSE&G notes, only those inside the metered property know precisely what is occurring in the home that consumes electricity, and the utility is not required to guess why an accurate metering demonstrates materially different readings from a similar period one year before.

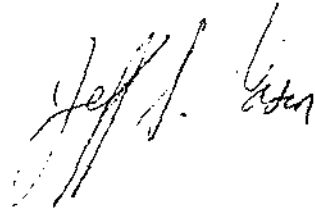
As noted in the discussion above regarding Ms. Grazioli's testimony, she had expressed concern about the lack of a third-party test of the meter's accuracy. In fact, N.J.A.C. 14-3:4.5 does not provide for testing by a third party. Instead, it provides for testing by the company at the customer's request. But the regulation has two components dealing with test requests. Subsection (a) provides for a test request to be honored, so long as there is no more than one such request per year. There is no provision here that appears to limit the reasons that may underlie such a request, only that if it is, the utility shall test the meter for accuracy. Subsection (c), also addresses a situation where the meter will be removed and tested for accuracy. But this subsection, which contains options for witnessing of the test, provides for these options, and for the utility's obligation to provide notice of the options, only "[W]hen a billing dispute is known to exist." The existence of a "known" dispute allows for a meter test, one that is performed "by the utility" and also allows that the complaining customer, "may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party." Importantly, the regulation also establishes the responsibility for informing the complaining customer of these available testing procedures, fixing it on the utility, which, "shall, prior to removing the meter, advise the customer," of these options. At the hearing, when Ms. Grazioli mentioned her request for third-party meter testing that "has never been done," counsel for PSE&G quickly noted that such had not been requested, and that anyway, there was no such provision for "third-party testing," but only for the BPU-witnessed test by PSE&G, which, she asserted, had never been requested. Counsel is correct, as there appears to be no written request for any witnessed testing, and indeed Ms. Grazioli only mentioned that she had verbally requested this of a Mr. Sullivan, who did not appear at the hearing. But what counsel for PSE&G did not address was whether any representatives of the company, knowing of the request for a test of the meter made by the customer, ever fulfilled the company's mandate that it "shall" notify the customer of the third-party

witness option. It might be that the utility claims that it did not have any definitive knowledge that a billing dispute existed in March 2013, when the meter was removed. But one may question whether the company, asked to test a meter for accuracy, must assume that a billing dispute may arise, and should then be required to provide notice of the witness options. Mr. and Mrs. Grazioli's Petition, filed with the BPU on July 12, 2013, states that their bills had gone up dramatically; they had called the utility "numerous times in reference to this situation;" they had called and requested the meters be tested; and that they were contesting the accuracy of the bills. PSE&G's Answer to Petition does not state if any request for testing was made or the circumstances under which it came to remove and test the meter. But from the latest submission, it seems that PSE&G does not dispute that when the meter was removed it knew that the customer was upset about the charges. I am persuaded that at the time that the meter was removed for testing, the company had enough information that it should have treated the matter as one where the bills were being questioned, and that the notice of the witness option should have been provided. I **FIND** that it was not. That said, it is the case that the testing was performed by a technician, who certifies to his experience and qualification to perform the test, and the testing equipment has itself been tested and found accurate by the Division of Weights and Measures. The testing showed the meter to be accurate. There is no reason to believe that a witnessed test would have resulted in a different outcome, and I do not deem it appropriate to ignore the test results even though the customer was not told that a witness could be present for the test. Without suggesting that PSE&G may ignore its obligation, I **FIND** that the preponderance of the evidence in this case is that the metering was correct. I cannot explain the difference in the bills, but if the electricity usage was properly metered, there is no cause to conclude that the customer does not owe the bill calculated by applying the approved tariff to the metered usage. The violation of the notice requirement is procedural in nature. In the absence of any reason to cast doubt on the accuracy of the test, I **CONCLUDE** that the bills rendered are accurate reflections of the usage and of the correct billing for that usage. The challenge to the bills fails and the entire balance as stated in Exhibit R-2 is owed, in addition to any further billings rendered since that date that remain unpaid.

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.



November 25, 2014
DATE

JEFF S. MASIN, ALJ

Date Received at Agency:

Date Mailed to Parties:

mph

LIST OF WITNESSES:

For petitioners:

Barbara Grazioli

For respondent:

James T. Walsh

LIST OF EXHIBITS:

For petitioners:

P-1 E-mail response from Barbara Grazioli to the November 17, 2014, letter sent to the parties

For respondent:

R-1 Meter Information
R-2 PSE&G Statement of Electric and/or Gas Billing and Payments
R-3 November 21, 2014 letter with attached Certifications