



Agenda Date: 3/18/16
Agenda Item: VIIB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MARIA PANZARELLA,)	ORDER
Petitioner)	
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	DOCKET NO. EC15091085U
Respondent)	OAL DOCKET NO. PUC 18201-15

Parties of Record:

Maria Panzarella, Petitioner, pro se
Alex Stern, Esq., on behalf of Respondent, Public Service Electric & Gas Company

BY THE BOARD:

BACKGROUND

On September 21, 2015, Maria Panzarella ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a billing dispute with Public Service Electric & Gas Company ("Respondent") for utility services rendered by Respondent to the South Oakland Avenue premises in Runnemede, New Jersey (the "Property").

After the filing of Respondent's answer on October 19, 2015, the Board transmitted this matter to the Office of Administrative Law ("OAL") on November 6, 2015, for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Joseph A. Ascione.

On November 19, 2015, the OAL mailed notice of the hearing in this matter for December 7, 2015. ALJ Ascione waited until 9:40 a.m., but the Petitioner failed to appear. Nothing in the record reflected a request for adjournment or late arrival on said date.

As a result of Petitioner's failure to appear, ALJ Ascione, pursuant to N.J.A.C. 1:1-14.4(d), issued an "Initial Decision Failure to Appear and on the Merits" which was submitted to the Board on January 21, 2016. N.J.A.C. 1:1-14.4(d) states:

If the appearing party requires an initial decision on the merits, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

At the hearing, ALJ Ascione accepted testimony from James T. Walsh, a Senior Customer Relations Consultant, employed by Respondent for over thirty-eight years. Murphy testified, and ALJ Ascione accepted as credible, the following:

1. The customer has formally disputed high billing to the Board.
2. Petitioner's billing is consistent with billings for similarly sized residences in the area.
3. Respondent tried to communicate with Petitioner to run a meter test or replace the meter, and Petitioner did not respond on numerous occasions.
4. Petitioner's failure to make payment for an extensive period of time resulted in previous outstanding balances and a prior hearing.
5. The prior hearing resolved when Petitioner filed a bankruptcy petition. Respondent wrote off the then outstanding balance in excess of \$12,000.
6. Petitioner opened a new account with Respondent and has failed to make timely monthly payment and is now in arrears of \$1,298. Respondent is providing continued services to Petitioner.
7. Petitioner is eligible for some energy assistance from the Universal Service Fund, which amounts have been paid to Respondent. Petitioner's share of the outstanding balance is \$1,298.

[Initial Decision at 2.]

Accordingly, ALJ Ascione dismissed the petition for Petitioner's failure to appear at the hearing; Petitioner's failure to allow Respondent to test or replace the meter; and for Respondent's proof that Petitioner is obligated to Respondent in at least the amount of \$1,298. The record in this matter was closed on December 7, 2015, the same day as the hearing.

By Order of Extension dated February 24, 2016, the Board was given until April 21, 2016, to render a final agency decision. Having reviewed the record, the Board now adopts the Initial Decision.

DISCUSSION

N.J.A.C. 1:1-14.4(a) provides:

If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall, unless proceeding pursuant to (d) below, direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

N.J.A.C. 1:1-3.3(b) reads:

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge. Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

In reaching his decision, ALJ Ascione reasoned that Petitioner was informed of the December 7, 2015 hearing date by mail in a notice sent to her on November 19, 2015. Despite being notified, Petitioner did not appear nor subsequently contact the court.

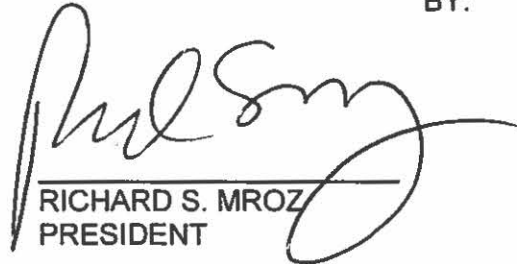
It is important to note that N.J.A.C. 1:1-14.4(a) require that the judge hold the matter for one (1) day before taking any action. In this matter however, the record was closed on December 7, 2015, the same day that Petitioner was scheduled to appear at the hearing, rather than one day later. That being said, the Board is confident that this oversight should not impact its decision in this case. N.J.A.C. 1:1-1.3(b) provides for the relaxation of procedural rules in instances where it would not result in unfairness or injustice. In this matter, both fairness and justice were satisfied. First, there is no indication that the Petitioner contacted the court on December 8, 2015, (one day after she missed the hearing) or at any time after that. Second, although Petitioner was duly served with the Initial Decision, which expressly notifies the parties of their right to file exceptions to the Initial Decision within thirteen (13) days of receipt of the decision, neither Petitioner nor Respondent filed exceptions. Petitioner was properly notified of the hearing, served with the Initial Decision, and given ample opportunity to respond to the adverse ruling, but chose not to do so. Under those circumstances, the one (1) day oversight outlined above had no bearing on Petitioner's due process and the Board hereby relaxes that requirement in this action.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition of Maria Panzarella be **HEREBY DISMISSED**.


The effective date of this Order is March 28, 2016.

DATED: 3-18-16

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



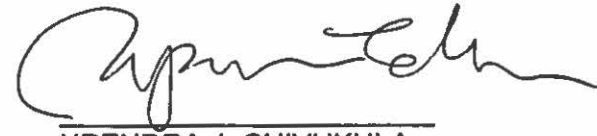
JOSÉPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER




DIANNE SOLOMON
COMMISSIONER



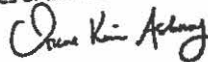
UPENDRA J. CHIVUKULA
COMMISSIONER

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



MARIA PANZARELLA

V.

PUBLIC SERVICE ELECTRIC & GAS COMPANY

BPU DOCKET NO. EC15091085U

OAL DOCKET NO. PUC 18201-15

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
JAN 21 2016
BOARD OF PUBLIC UTILITIES
MAIL ROOM

JAN 21 2016

INITIAL DECISION
FAILURE TO APPEAR
AND ON THE MERITS

OAL DKT. NO. PUC 18201-15

BPU DKT. NO. EC15091085U

MARIA PANZARELLA,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC

AND GAS COMPANY,

Respondent.

No appearance by or behalf of **Maria Panzarella**, petitioner

Alex Stern, Esq., for respondent

Record Closed: December 7, 2015

Decided: January 21, 2016

BEFORE **JOSEPH A. ASCIONE, ALJ:**

On November 6, 2015, this matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

On November 19, 2015, the OAL mailed notice of the hearing in this matter for December 7, 2015. The petitioner failed to appear on said date. The Administrative Law Judge (ALJ) waited to 9:40 a.m. and the petitioner did not appear, nor does the OAL record reflect any requests for adjournment or a late arrival. This petitioner

cms
V. Haynes
D. Lee Thom
E. Hartsfield
J. Ford
R. Lambert
e. Jordan
B. Agee
J. Gertsman
C. Vachier

recently had a prior billing dispute with respondent, and she regularly failed to appear at hearing dates or attend telephone conferences. The ALJ noted the failure to appear. The respondent, pursuant to N.J.A.C. 1.1-14.4(d), requested that the matter proceed on the merits ex-parte. The ALJ granted this request, and took testimony. The hearing closed on December 7, 2015.

FACTUAL DISCUSSION AND FINDINGS

Respondent presented testimony from James T. Walsh, a Senior Customer Relations Consultant, employed by it for over thirty-eight years. His testimony was accepted as credible.

I have reviewed the testimonial record and I **FIND**:

1. The customer has formally disputed high billing to the Board of Public Utilities.
2. Petitioner's billing is consistent with billings for similarly sized residences in the area.
3. Respondent tried to communicate with petitioner to run a meter test or replace the meter. Petitioner did not respond on numerous occasions.
4. Petitioner's failure to make payment for an extensive period of time resulted in previous outstanding balances and a prior hearing.
5. The prior hearing resolved when petitioner filed a bankruptcy petition. Respondent wrote off the then outstanding balance in excess of \$12,000.
6. Petitioner opened a new account with respondent and has failed to make timely monthly payment and is now in arrears \$1,298. Respondent is providing continued services to petitioner.
7. Petitioner is eligible for some energy assistance from the Universal Service Fund, those amount have been paid to respondent. Petitioner's share of the outstanding balance is the \$1,298.

CONCLUSION

I **CONCLUDE** that petitioner has denied access to the premises for respondent to test or replace the meter to determine if the billing is improper.

I **CONCLUDE** that the respondent has properly billed the petitioner.

I **CONCLUDE** the petitioner has failed to pay her billing obligations to respondent. in at least the amount of \$1,298.

ORDER

I **ORDER** the petition to be **DISMISSED** for petitioner's failure to appear at the hearing.

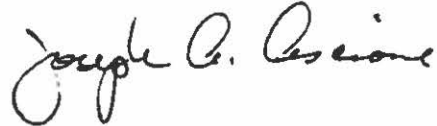
I **ORDER** the petition to be **DISMISSED** for petitioner's failure to allow respondent to test or replace the meter for testing.

I **ORDER** the petition to be **DISMISSED** for respondent's proof that petitioner is obligated to respondent in at least the amount of \$1,298.

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 21, 2016

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

Date Mailed to Parties:

lam

APPENDIX

LIST OF WITNESSES

For Appellant:

None

For Respondent:

James T. Walsh, PSE&G Service Center Relations Consultant

LIST OF EXHIBITS

For Appellant:

None

For Respondent:

Transmittal Package from the Board of Public Utilities