



Agenda Date: 12/19/17
Agenda Item: VIIA

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

GEORGE EIKENS,
Petitioner,

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,
Respondent.

ORDER OF EXTENSION

BPU DOCKET NO. EC16090876U
OAL DOCKET NO. PUC 17128-16

(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on December 4, 2017; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on January 18, 2018. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until March 4, 2018.

DATED: 12/19/17

BOARD OF PUBLIC UTILITIES
BY:¹

RICHARD S. MROZ
PRESIDENT

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

¹ Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 12/20/17

cc: Service List Attached

DATED: 12/26/17



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 12/26/17

Date Board mailed executed Order to Parties: 12/27/18

GEORGE J. EIKENS

V.

JERSEY CENTRAL POWER & LIGHT COMPANY
BPU DOCKET NO. EC16090876U
OAL DOCKET NO. PUC 17128-16

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON MOTION
TO ENFORCE SETTLEMENT

GEORGE EIKENS,

Petitioner,

v.

**JERSEY CENTRAL POWER & LIGHT
COMPANY,**

Respondent.

OAL DKT. NO. PUC 17128-16

AGENCY DKT. NO. EC16090876U

George Eikens, petitioner, pro se

Lauren M. Lepkoski, Esq., for respondent Jersey Central Power & Light Company

Record Closed: November 10, 2017

Decided: December 4, 2017

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 15, 2016, petitioner George Eikens (Elkens) filed a petition (Petition) with the New Jersey Board of Public Utilities (Board) requesting a formal hearing on a billing dispute with respondent Jersey City Power & Light Company (Company). The Board sent a copy of the Petition to respondent on October 4, 2016, and respondent filed its Verified Answer to the Petition on October 18, 2016. This matter was filed with the Office of Administrative Law (OAL) on November 14, 2016, 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.

After the first scheduled telephone prehearing conference was adjourned at respondent's request, the Honorable Edward J. Delanoy, Jr., ALJ, held a telephone prehearing conference with the parties on January 23, 2017. During this call, petitioner asked that the hearing not be scheduled until he retained counsel. Petitioner failed to appear for a telephone prehearing conference scheduled for March 1, 2017, but contacted Judge Delanoy's office five days later on the mistaken presumption that the conference was scheduled for March 6, 2017. Petitioner also advised Judge Delanoy's assistant that he was having difficulty retaining counsel.

During a May 15, 2017, telephone prehearing conference, the parties agreed to an August 7, 2017, hearing date. At petitioner's request, and over respondent's objection, the hearing was later rescheduled to September 22, 2017.

On September 15, 2017, the matter was reassigned to the undersigned and, on September 22, 2017, the parties appeared before me for the scheduled hearing. Petitioner appeared without counsel. Prior to commencing the hearing, I held a prehearing settlement conference, as a result of which the parties agreed, on the record, to a settlement of all issues in dispute. N.J.A.C. 1:1-19.1(a)(2).

At approximately 10:30 a.m. on Friday, September 22, 2017, a settlement was placed on the record, including petitioner's agreement to make a down payment toward the outstanding balance of \$7,312.91, on his Company account on or before October 2, 2017. As directed by the tribunal, respondent prepared the settlement agreement and a certificate of withdrawal, and sent the documents to petitioner for execution. Petitioner did not sign or return these documents.

On October 3, 2017, respondent sent a letter to the undersigned stating that petitioner had failed to execute the settlement agreement, had not made the agreed upon down payment, and had contacted the Board to dispute the settlement agreement. No notice of this dispute was filed by petitioner with the OAL. Since October 3, 2017, petitioner has not responded to efforts by my office to reschedule the hearing and there has still been no filing of an executed agreement, and petitioner has made no payments on his Company account.

On October 31, 2017, respondent filed a motion to enforce the settlement agreement and to dismiss the petition. N.J.A.C. 1:1-12.1 et seq. Petitioner made no response to respondent's motion.

FACTS

On September 22, 2017, the parties participated in a settlement conference and reached agreement on the following (the Settlement), which was read into the record by respondent:

1. Petitioner had requested a hearing related to a billing dispute with respondent for electric service provided at petitioner's former residence, 35 Valley Street, Highlands, New Jersey;
2. Respondent currently provides electric service to petitioner at 141 Bay Avenue, Highlands, New Jersey;
3. Petitioner's outstanding account balance, as of September 22, 2017, was \$7,312.91, covering amounts owed for service at 35 Valley Street, at 141 Bay Avenue under the name of petitioner's minor child,¹ and at 141 Bay Avenue under petitioner's name;
4. Petitioner would make a down payment to respondent of \$1,700.00 on or before October 2, 2017;
5. Petitioner would make monthly installment payments of \$200.00 over the next twenty-four months, plus payments of then-current charges; and
6. Respondent would draft an agreement setting forth the above terms and a Certificate of Withdrawal, by which petitioner would withdraw the Petition.

¹ When petitioner moved to the residence at 141 Bay Avenue, he opened an electric account with respondent on May 29, 2013, in the name of his minor child, and kept the child's name on the account through October 22, 2015.

Respondent would deliver both documents to petitioner, who would sign and return both documents to respondent. Respondent would forward the fully-executed settlement agreement to the tribunal for review and a filing with the Board of an Initial Decision on the Settlement.

In response to questions from the tribunal, petitioner made the following statements on the record:

1. Petitioner filed this case against respondent;
2. Petitioner carefully reviewed the terms of the Settlement;
3. Petitioner had no questions regarding the Settlement;
4. Petitioner accepted the terms of the Settlement;
5. Petitioner voluntarily agreed to the terms of the Settlement;
6. No person made any promises to petitioner regarding any matters outside the terms of the Settlement in an attempt to induce him to enter into the Settlement;
7. Petitioner was not coerced nor threatened in any way to enter into the Settlement;
8. On the day of the scheduled hearing and settlement conference, petitioner was not taking any form of medication or other substance that might impair his ability to consider and/or accept the Settlement; and
9. Petitioner asked the tribunal to approve the Settlement.

Respondent prepared a Settlement Agreement and a Certificate of Withdrawal, and delivered both to petitioner on September 25, 2017. Petitioner did not sign or return either document to respondent, nor has petitioner made payments on his utility account.²

On October 3, 2017, respondent notified the tribunal that petitioner had failed to execute the Settlement Agreement and requested that a new hearing date be scheduled. Both respondent and my office attempted to reach agreement with petitioner as to a new hearing date. In the last email exchange with petitioner, he was advised to notify my office of his availability by October 25, 2017. He did not respond to this request. As stated above, the Company filed the present motion to enforce the oral settlement on October 31, 2017.

Insofar as petitioner failed to respond to the motion, as well as on the basis of the oral record, the preceding statements are accepted and not disputed. Accordingly, I **FIND** the preceding as **FACTS**. Further, I **FIND** that both parties voluntarily agreed to the Settlement as evidenced by their sworn testimony.

In its motion to enforce the settlement, respondent notes that petitioner contacted the Board at some time prior to October 2, 2017, regarding concerns with the settlement, and that, on October 2, 2017, petitioner notified respondent that he "believed there may be discrepancies" in the Settlement Agreement. Respondent states that petitioner has yet to identify any such discrepancies. Since petitioner has not responded to this motion nor has contacted my office (by mail, email or telephone) regarding his concerns with the settlement and/or the Settlement Agreement, I **FIND** that petitioner has failed to provide any justification for his failure to execute the Settlement Agreement and Certificate of Withdrawal.

LEGAL ANALYSIS AND CONCLUSION

It is a well-established principle of the law that "settlement of litigation ranks high in [the] public policy" of New Jersey. Pascarella v. Bruck, 190 N.J. Super., 118, 125 (App.

² In an October 21, 2017, email to my office, petitioner stated that he had made "good faith" payments to the Company, but the Company continues to assert that no payments have been made.

Div.), certif. denied, 94 N.J. 600 (1983). See also, Department of the Pub. Advocate v. Board of Pub. Util., 206 N.J. Super. 523, 528 (App. Div.1985).

Where the parties agree upon the essential terms of a settlement, so that the mechanics can be "fleshed out" in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges.

[Bistricher v. Bistricher, 231 N.J. Super. 143, 145 (Ch. Div. 1983)].

Respondent argues that, in the absence of compelling circumstances, second-guessing or remorse on petitioner's part should not be sufficient to negate the terms of the settlement to which he voluntarily agreed. "Absent a showing of fraud or other compelling circumstances, an agreement to settle a lawsuit is a contract[.]" Id. at 147.

Over the course of the year since petitioner filed the Petition, he has repeatedly stated that he has "proof" that the Company's records are not correct. But, when provided the opportunity to make his case at the September 22, 2017 hearing, he voluntarily gave up the chance to do so. In contrast, starting with its answer to the Petition, respondent has presented documents allegedly showing the amounts billed to petitioner by the Company for electricity delivered to both his residences on accounts in the name of petitioner and of his minor son.

Further, respondent alleges that petitioner is not acting in good faith. He had ample opportunity to ask questions of both respondent and the undersigned, about the Company's billing records and about the terms of the settlement, on September 22, 2017, or later, as both respondent and my office made multiple phone calls to him in the month following the settlement. Petitioner failed to raise any objections to the settlement until the date for making the down payment had arrived and he has yet to respond, by any means, to the present motion.

I concur with respondents' argument and will grant the motion to enforce the settlement. As found above, and as the transcript of the record makes clear, petitioner understood and voluntarily accepted the settlement terms placed on the record before me

on September 22, 2017. All that remained was to reduce the terms to a writing, and to draft and execute a certificate of withdrawal of the underlying Petition.

ORDER

Respondent's motion to enforce the settlement reached between the parties on the record on September 22, 2017, the terms of which are set forth above, is **GRANTED** and petitioner's Petition is hereby **DISMISSED**.

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

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

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

December 4, 2017 _____

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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