

Date Board mailed Order to OAL: 12-2-2020

cc: Service List Attached

DATED: 12/2/2020



ELLEN S. BASS, ACTING DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 12/2/2020

Date Board mailed executed Order to Parties: 12-3-2020

DAWN MACRILLO, PETITIONER

V.

SOUTH JERSEY GAS COMPANY, RESPONDENT

**BPU DOCKET NO. GC18080939U
OAL DOCKET NO. PUC 10786-19**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 10786-19

AGENCY DKT NO. GC18080939U

DAWN MACRILLO,

Petitioner,

v.

SOUTH JERSEY GAS

COMPANY,

Respondent.

Dawn Macrillo, petitioner, pro se

Van L. McPherson, III, Esq., for respondent South Jersey Gas Company

Record Closed: March 6, 2020

Decided: October 29, 2020

BEFORE **JOHN S. KENNEDY**, ALJ:

STATEMENT OF THE CASE

On August 21, 2018, Dawn Macrillo (hereinafter Macrillo or petitioner) filed a billing dispute against South Jersey Gas Company (hereinafter SJG) with the Board of Public Utilities (hereinafter Board or BPU). SJG supplies natural gas service to the Macrillo's home. Petitioner believes there was an issue with her gas meter, and she alleges that the failure of the meter caused her to be overcharged.

PROCEDURAL HISTORY

The original petition was transmitted to the Office of Administrative Law (OAL) under docket number PUC 15645-18. Petitioner failed to appear at the scheduled hearing and the petition was returned to the Board of Public Utilities. Petitioner requested a second fair hearing, and the matter was transmitted to the OAL under docket number PUC 10786-19 where it was filed on August 7, 2019, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on February 21, 2020. The record remained open until March 6, 2020, to allow SJG to provide copies of bills from April 2017, through October 2018. Pursuant to Executive Order 127 signed by Governor Murphy on April 14, 2020, any decision that was due anytime from March 9, 2020, (when the Governor declared a State of Emergency) until thirty days after the emergency ends, was given an automatic ninety-day extension because of the Covid-19 pandemic.

SUMMARY OF RELEVANT FACTS

The record in this matter includes documentary evidence and the testimony of the individuals who prepared the documents or had knowledge of the matter. After considering the evidence presented, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Petitioner has lived at her current residence since at least 2012. Between 2012 and 2014, petitioner's gas meter was blocked by a hatch in her deck. In 2014, there was an inaccurate reading of her meter and she was miss-billed. SJG went back to the property and discovered that the meter was not registering. The meter was replaced in April 2016, (SJG-1). The amount calculated for the non-registering period totaled \$2,401.03 representing 1,864 cubic feet of gas for eighteen months from August 1, 2014, to January 30, 2016. Petitioner made multiple attempts to obtain all of her gas bills to attempt to determine if the billing was correct. Up until the date of the hearing, petitioner was still disputing not only the amount charged between 2014 and 2016, but also all of the charges currently owed. Petitioner was advised that this tribunal only retains jurisdiction for the disputed amount as set forth in her petition.

Sarah Miller is a Customer Service Supervisor with SJG, and was assigned the petitioner's complaint. Her job is to handle billing disputes and inquiries. Miller testified that in August 2016, SJG contacted petitioner by telephone after the meter was exchanged. That conversation was recorded and played into evidence at the hearing. During that call, petitioner was advised that her meter was not registering and that an adjustment may need to be made. During the time period when the meter was not registering, SJG only billed petitioner the minimum service charge and not for gas usage. In SJG-1, SJG outlined both Heat Sensitive Use Factors and Non-Heat Use Factors used to determine the gas usage for the non-registering period.

On November 4, 2019, petitioner was billed \$4,141.78 for past due service. (SJG-2 pp. 5-7.) This amount included the disputed charges of \$2,401.03 relating to the non-registering period from August 1, 2014, to January 30, 2016. Petitioner's gas was shut off over the past two years for failure to pay the balance of the charges that were not disputed. SJG-2 includes all corrected bills from October 2018, until November 2019. The corrected bills for the period between April 2017, and October 2018, were submitted on February 24, 2020, and marked as SJG-3.

Dawn Macrillo, testified on her own behalf. When the meter was removed from her property and tested, SJG determined it to be faulty and it was destroyed. She was never given an opportunity to have the meter tested herself to determine if it was faulty. She has been disputing her gas bills since 2017, and continually receives corrected bills that make it impossible to determine what is actually due. According to her own calculations, petitioner determined that she should have a credit in the amount of \$801 for 2018, and \$976 for 2019. Therefore she is disputing that she owes \$2,401.03.

LEGAL ANALYSIS AND CONCLUSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are justifiably before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and

generates reliable belief that the tendered hypothesis, in all human 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. 14:3-1.3(a) provides that “each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the [BPU] for approval[.]” The tariff shall “clearly describe . . . all terms and conditions regarding the services[.]” N.J.A.C. 14:3-1.3(b)2. A utility is expected to operate in accordance with its tariff, N.J.A.C. 14:3-1.3(d), though any inconsistency between a tariff and the governing regulations is resolved in favor of the regulation, unless the tariff “provides for more favorable treatment of customers.” N.J.A.C. 14:3-1.3(i). In other words, a tariff is essentially the law governing the relationship between a public utility and its customers, and is binding upon those parties. Application of Saddle River, 71 N.J. 14, 23 (1976).

Pursuant to N.J.A.C. 14:3-6.1(b) each utility company shall keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years.

N.J.A.C. 14:5-4.3(a) states:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

N.J.A.C. 14:3-4.6(a) states:

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.

In this case, meter #0119441, which was removed from the Macrillo's residence, was not registering for the period from August 1, 2014, through April 12, 2016. Being less than two percent over or under 100 percent, the meter was not accurate in accordance with the regulation. To determine the amount that should have been billed during this time period, SJG factored in weather, using degree days, to determine heat sensitive

usage. Non-heat consumption was determined utilizing a summer month when there are no degree days. The amount calculated for the non-registering period totaled \$2,401.03 representing 1,864 cubic feet of gas. All of the correct bills were admitted into evidence for the time period in question. Macrillo provided no legally competent evidence to support the claim that the bills were inaccurate. I therefore **CONCLUDE** that the amount billed for from August 1, 2014, through April 12, 2016, was accurate. I further **CONCLUDE** that petitioner has failed to provide any evidence or credible basis for her claims that her billing was incorrect.

ORDER

All relief sought by petitioner is **DENIED** and the action filed by petitioner is **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.

October 29, 2020
DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency:

Date Mailed to Parties:

JSK/dm

APPENDIX

LIST OF WITNESSES

For petitioner:

Dawn Macrillo

For respondent:

Sarah Miller

LIST OF EXHIBITS

For petitioner:

P-1 Invoice for billing month August 2016

For respondent:

SJG1 Letter, dated April 27, 2017

SJG2 Corrected bills from October 2018, until November 2019

SJG3 Corrected bills from April 2017, until October 2018