

Agenda Date: 2/10/11 Agenda Item: 7B

STATE OF NEW JERSEY Board of Public Utilities Two Gateway Center, Suite 801 Newark, NJ 07102 www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MAXWELL P. CLEMMONS, Petitioner))	ORDER ADOPTING INITIAL DECISION DISMISSAL
V)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	
Respondent)	BPU Dkt. No. EC09100851U OAL Dkt. No. PUC03267-10

Keith O.D. Moses, Esq., Jersey City, New Jersey, appearing on behalf of Petitioner, Maxwell P. Clemmons

Alexander C. Stern, Esq., Newark, New Jersey, on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:

On October 16, 2009, Maxwell P. Clemmons ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a billing dispute with Public Service Electric and Gas Company ("Respondent") for utility services rendered by Respondent.

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to <u>N.J.S.A.</u> 52:14B-1 <u>et seq.</u> and <u>N.J.S.A.</u> 52:14F-1 <u>et seq.</u> This matter was assigned to Administrative Law Judge ("ALJ") Kimberly A. Moss.

By Initial Decision issued on November 22, 2010, and submitted to the Board on December 2, 2010, ALJ Moss set out the procedural history of this matter including the scheduling of hearing dates and status conference that had to be rescheduled as a result of the failure of Petitioner and/or his attorney to appear. ALJ Moss noted that she scheduled a preemptory hearing on October 27, 2010, at which Petitioner's counsel stated on the record that his client was very ill to the point of being demented and requested the option to withdraw the petition. The ALJ requested that counsel submit a letter indicating the request to withdraw the petition, and noted in the Initial Decision that such a letter was never submitted.

Based on the record, ALJ Moss concluded that as Petitioner had failed to meet his burden of proof and that no cause of action exists, the petition in this matter should be dismissed.

After review of the record, the Board <u>HEREBY FINDS</u> that the findings of fact and conclusions of law set out by ALJ Moss in her Initial Decision are reasonable and appropriate. Accordingly, the Board <u>HEREBY ADOPTS</u> the Initial Decision in its entirety as if fully set forth herein. The petition in this matter is <u>HEREBY DISMISSED</u>.

DATED: 2/10/11

BOARD OF PUBLIC UTILITIES BY:

LEE A. SOLOMON

PRESIDENT

M. For

JEANNE M. FOX COMMISSIONER

JOSEPH L. FIORDALISO COMMISSIONER

NICHOLAS ASSÈLTA 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

MAXWELL P. CLEMMONS

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC09100851U OAL DOCKET NO. PUC3267-10

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State of New Jersey OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL OAL DKT. NO. PUC 03267-10 AGENCY DKT NO. EC09100851U

MAXWELL P. CLEMMONS

Petitioner,

V.

PUBLIC SERVICE ELECTRIC AND GAS

COMPANY,

Respondent.

Keith O. D. Moses, Esq appearing on behalf of petitioner

Felix Khalatmikov, Esq. appearing on behalf of respondent

Record Closed: October 27, 2010 Decided: November 22, 2010

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On March 23, 2010, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case pursuant to <u>N.J.S.A</u>. 52:14B-1 to -15 and <u>N.J.S.A</u>. 52:14f 1 TO-13. A telephone prehearing was conducted on May 20, 2010 at which time a hearing was scheduled for July 26, 2010. At that hearing, petitioner failed to appear.

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OAL DKT. NO. PUC 03267-2010

Petitioner's counsel appeared late and informed the Court that he believed petitioner had Alzheimer's and requested an adjournment in order for a guardian to be appointed for the petitioner.

The matter was rescheduled for September 20, 2010, during which time petitioner and petitioner's counsel failed to appear. Petitioner's counsel called within twenty-four hours and stated that he had been ill. A status conference was conducted on September 22, 2010 wherein petitioner's counsel advised that petitioner's family did not feel he needed a guardian and did not want to proceed with a guardian's appearance. He also stated that petitioner was living in Brooklyn at that time.

A Preemptory hearing date was scheduled for October 27, 2010 at 9:30a.m. Petitioner failed to appear. Petitioner's counsel appeared over forty-five minutes late to advise that petitioner is very ill to the point of being demented. Petitioner's counsel requested the option to withdraw the petition. The undersigned requested that petitioner's counsel send a letter indicating same. To date, the undersigned has not received such letter.

Therefore, having considered the testimony, the documents presented and the argument of counsel, as well as applying the standard to be applied in such cases, I **CONCLUDE** that no evidence was submitted that respondent overstated the amount due under account **# CONCLUDE** that no cause of action exists. Accordingly, based upon all of the foregoing, and for the reasons placed on the record on October 27, 2010, this matter is not longer a contested case before the OAL.

It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by **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 <u>N.J.S.A.</u> 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, Suite 801, Newark, NJ 07102, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 22, 2010

DATE

Date Received at Agency:

Date Mailed to Parties: lib

Xent

KIMBERLY A. MOSS, ALJ

November 22, 2010