



Agenda Date: 3/12/12
Agenda Item: 7C

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

CARLOS AND JEANETTE BECKFORD,
Petitioners,

V.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A
ELIZABETHTOWN GAS,
Respondent

) ORDER ADOPTING
) INITIAL DECISION
)
)
) BPU DOCKET NO. GC10110860U
) OAL DOCKET NO. PUC 08393-11

Parties of Record:

Carlos Beckford, appearing pro se

Deborah Franco, Esq., appearing on behalf of respondent (Cullen & Dykman, LLP)

BY THE BOARD:

STATEMENT OF THE CASE

By petition filed with the Board of Public Utilities ("Board") on or about November 19, 2010, Carlos and Jeanette Beckford ("Petitioners") disputed gas usage for which they were billed \$9,339.80 by Elizabethtown Gas ("Respondent"). Petitioners alleged that they were only responsible for usage totaling \$2,500. Petitioners sought a decision ordering Elizabethtown to accept \$2,500 to restore gas service until the dispute could be resolved.

PROCEDURAL HISTORY

On July 11, 2011, the petition was transmitted to the Office of Administrative Law ("OAL") 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. A telephone conference took place on August 17, 2011 followed by an evidentiary hearing on November 3, 2011. Administrative Law Judge Kimberly A. Moss ("ALJ Moss") issued an Initial Decision on November 16, 2011 dismissing the petition. No exceptions were filed.

FINDINGS OF FACT

ALJ Moss properly outlined several facts relevant to the dispute. Petitioners reside in Elizabeth, New Jersey and are gas customers of Respondent. (ID at 1-2).¹ Petitioners own a two family

¹ Citations to the Initial Decision are referred to as "ID".

home with a separate gas account for each unit. (ID at 2). Unbeknownst to Respondent, the second floor account had been inactive from April 2002 until Petitioners' informed Respondent of that fact in October 2008. (ID at 2, 4). Respondent had been sending Petitioners estimated bills for the second floor throughout that time period. (Tr. 18:6-9). Respondent was also under the mistaken belief that the first floor meter had been inactive since 2002 until Petitioners informed them in October 2008 that the meter was active. (ID at 4). Respondent then conducted a first floor meter reading in October 2008 and discovered an increase in cubic consumption of 4143 from the last meter reading in 2002. (Tr. 24:19-25). At that time, Respondent also tested the first floor meter which registered within acceptable limits under state regulations. (Tr. 20:24-25;21:1-2). Respondent then informed Petitioners that both accounts would be adjusted accordingly and that they could expect to receive a credit for the second floor which would be applied to the bill for the first floor. (Tr. 19:2-12) However, Respondent mistakenly issued a \$2,384.07 check to Petitioner rather than applying it to the first floor bill. (Tr. 19:13-15).² Respondent alleges that Petitioners still owe \$9,684.29 through September 17, 2010 and as a result of non-payment disconnected Petitioners' gas that same month.

Petitioners insisted that their gas usage through 2010 could not have amounted to more than \$2,500, in part, because they used no gas prior to converting their home from oil to gas in April 2007. (Tr. 8:16-19). To prove their April 2007 conversion to gas, Petitioners submitted to the court an April 1, 2007 bill from Wendy's Plumbing & Heating listing installation of two new hot water heaters, a gas line, main water supply line, hot water line and a new shower. (Tr. 9:13-15). Petitioners acknowledged that their exhibit did not indicate that conversion took place and admitted that they had nothing but their testimony to prove that a conversion occurred in 2007. (Tr. 15:9-15). In addition, Petitioners are of the belief that they should not be held responsible for Respondent's mistake in issuing a check rather than a credit. (Tr. 13-17).

DISCUSSION AND FINDINGS OF LAW

After review and consideration of the entire record, the Board **HEREBY FINDS** that the findings and conclusions of ALJ Moss are reasonable and accordingly, **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be dismissed.

Petitioners bear the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). This petition raises the issue whether Petitioners were properly charged for gas usage at their two-family home between 2002 through 2010. Petitioners argued that the bill is excessive since they did not use gas service from 2002 through 2007. Other than their statements that conversion to gas occurred in 2007, Petitioners presented only a gas line and appliance installation bill from Wendy's Plumbing & Heating.

The evidence presented by Respondent however, established that Petitioners were properly charged for gas usage. Respondent conducted a first floor meter reading on April 20, 2002 which revealed an index of 4382. (ID at 3). The next reading of that meter took place in October 2008, indicating an index of 8525, or 4143 units of cubic consumption. To confirm the meter's accuracy, Respondent tested the first floor meter on October 15, 2008 which revealed that the meter was running within acceptable levels. (Tr. 20: 20-25; 21:1-2) (R-1). The meter

² Petitioners do not dispute the amount of the credit reflected in the check nor that they received the money and spent it. (Tr. 8:8-15).

was also tested on December 12, 2010 and the results were within acceptable levels. (ID at 3) (R-1).

If a hearing has been held before an ALJ, neither an agency head nor a reviewing court should disturb the ALJ's credibility determinations, "made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. N.J. Dep't. of Human Servs., 184 N.J. 367, 384 (2005), citing, Clowes v. Terminix International, Inc., 109 N.J. 575, 587-588 (1988). See also, S.D. v. Division of Medical Assistance and Health Services, 349 N.J. Super. 480, 484 (App. Div. 2002). Here, the ALJ accepted Respondent's testimony confirming the accuracy of the meter based on the test results and the meter's indication and quantification of gas consumption.

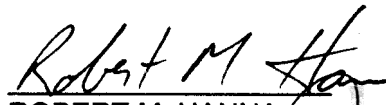
Petitioners simply did not meet their burden. Aside from testifying that they only owed \$2,500 for gas consumption, they did not establish sufficient facts to rebut the evidence presented by Respondent that the meter was tested and functioning properly and that the resulting bills were appropriate. The Board gives great weight to tests that measure a meter's accuracy. Edna M. Elco v. Public Service Electric and Gas Company, 96 N.J.A.R. 2d. 39 (Bureau of Regulatory Commissioners 1995). In this case, there is nothing in Petitioner's testimony or exhibit which would overcome the great weight given to tests establishing the accuracy of a meter.

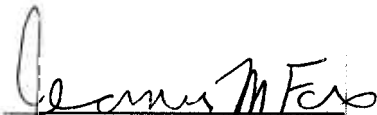
DECISION


Upon careful review and consideration of the record, the Board HEREBY FINDS that the factual determinations and legal conclusions of the ALJ are reasonable and based upon sufficient, competent, and credible evidence. The Board HEREBY ADOPTS the Initial Decision in its entirety and HEREBY ORDERS Petitioners' complaint to be DISMISSED.

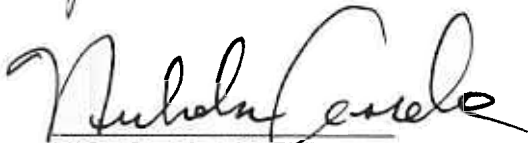
DATED: 3/12/2012

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
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



CARLOS AND JEANETTE BECKFORD
V.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A ELIZABETHTOWN GAS

BPU DOCKET NO. GC10110860U
OAL DOCKET NO. PUC08393-11

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BPU MAILROOM

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INITIAL DECISION

OAL DKT. NO. PUC 08393-11

AGENCY DKT. NO. GC10110860U

CARLOS AND JEANETTE BECKFORD,

Petitioners,

v.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A/

ELIZABETHTOWN GAS,

Respondent

Carlos Beckford, appearing pro se

**Deborah Franco, Esq., appearing on behalf of respondent (Cullen & Dykman,
attorneys)**

Record Closed: November 3, 2011

Decided November 16, 2011

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners Carlos and Jeanette Beckford (Beckford or petitioners) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Pivotal Utility Holdings Inc., D/B/A/ Elizabethtown Gas (Elizabethtown) for gas service provided to 517 Marshall Street, Elizabeth, New Jersey.

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On July 10, 2011, this matter was transmitted to the Office of Administrative Law (OAL) for hearing 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. A telephone prehearing was conducted on August 17, 2011, at which time a hearing was scheduled for November 3, 2011. The hearing was held on November 3, 2011, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

As the following is undisputed, I **FIND** it to be the **FACTS** of this case:

Beckford is a customer of Elizabethtown. The premises is a two-family house owned by Beckford. There is a gas account for the first floor and a gas account for the second floor. In 2008, Beckford informed Elizabethtown that the account on the second floor was not active. Elizabethtown verified that the second-floor account was not active. Beckford's wife, Jeannette Gordon, whose name the account was in, was issued a reimbursement check for \$2,384.07. Beckford's first-floor gas service was discontinued in November 2010. At that time Beckford stated that the only amount he owed was \$2,500. Since Beckford did not dispute \$2,500 of the outstanding balance, an agreement was reached by Beckford and Elizabethtown that he would pay the undisputed \$2,500. He made an initial payment of \$858.11 and the agreement was that he would pay \$450 per month in addition to his monthly bill until the \$2,500 was paid. Beckford did not comply with the payment agreement; therefore his service was again discontinued in April 2011. The first-floor meter was tested on November 8, 2008, and December 2, 2010.

Testimony

Carlos Beckford

Beckford stated that he converted from oil to gas in April 2007. Prior to April 2007, he used oil not gas, therefore the billing is incorrect. When his wife received the check for \$2384.07 from Elizabethtown, they assumed it was because they were overbilled. He admits the bill from Wendy's Plumbing and Heating, Exhibit P-1, does not say he converted from oil to gas in April 2007.

Aurora Balbuena

Aurora Balbuena (Balbuena) works as a customer relations representative for Elizabethtown. She has worked on Beckford's case since 2008. Beckford contacted Elizabethtown in 2008 stating that the second-floor account was not active. Beckford was informed that Elizabethtown would make the correction, but to expect a bigger bill for the first-floor account. He was also told that the overpayments would be created to his first-floor account. Beckford's wife was sent a reimbursement check instead of the first-floor account being credited.

The first-floor meter was removed and a test done on November 8, 2008, reflected that the meter was running .8 percent slow. Subsequently, the first-floor meter was again removed and a test done on December 2, 2010, reflected that the meter was running .4 percent slow. An actual meter reading was done for the first-floor apartment on April 20, 2002, that showed an index of 4382. The next actual reading on that meter was done on November 20, 2001, which showed an index of 8525. Beckford's outstanding balance is \$9,284.29.

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Having heard the testimony and witnesses **FIND** the following additional **FACTS**:

On April 20, 2002, there was an actual reading of the first-floor meter. Beckford was not billed for the first-floor account from April 20, 2002, thru October 23, 2008. Beckford was billed for the second-floor account, which was not in use. Once Beckford made Elizabethtown aware that the second-floor account was not in use, Elizabethtown read the first-floor meter on October 23, 2008. The October 23, 2008, reading showed that there was gas usage from April 20, 2002, thru October 23, 2008. Elizabethtown then billed Beckford for service to the first floor from April 20, 2002, thru October 23, 2008, in the amount of \$6,210.47.

Although Beckford submitted a bill for plumbing and heating services provided by Wendy's Plumbing and Heating on April 1, 2007, this bill does not state that Beckford did not use gas prior to that date. It also does not state that Beckford converted from oil to gas at that time.

The meter was removed and a test done on November 8, 2008 reflected that the meter was running .8 percent slow. The meter was again removed and a test done on December 2, 2010 reflected that the meter was running .4 percent slow.

LEGAL ANALYSIS AND CONCLUSION

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 the meters were registering at .8 percent and .4 percent slow. The meters were not registering fast. Elizabethtown is not requesting that the petitioner pay an

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adjustment based on the meters registering slow. I **CONCLUDE** that the meters were not registering fast and there is no need for an adjustment.

N.J.A.C. 14:3-7.1(a) provides

The customer of record as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

In this case Beckford was provided service for the first floor from April 20, 2002, until November 2008, for which he was not billed. He stated that he had oil not gas until April 2007. The gas-meter index showed meter usage from April 20, 2002, thru October 23 2008. I **CONCLUDE** that Beckford is responsible for payment of the gas usage from April 20, 2002, thru October 23, 2008, for the first-floor account.

ORDER

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

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.

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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.

11-16-11
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:

11/16/11


Date Mailed to Parties:
lib

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DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

OAL DKT. NO. PUC 08393-11

WITNESSES

For Petitioners:

None

For Respondent:

Aurora Balbuena

EXHIBITS

For Petitioners:

- P-1 Bill from Wendy's Plumbing and Heating Dated April 1, 2007
- P-2 Copy of check from AGL Resources to Jeanette Gordon in the amount of \$2384.07 dated November 13, 2008
- P-3 Marriage Certificate of Carlos Beckford and Jeanette Gordon

For Respondent:

- R-1 Meter-test results and consumption and billing record for Beckford from April 20, 2002, thru November 2008
- R-2 Field Service notes for Beckford
- R-3 Account notes for Beckford

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MANAGER

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BOARD OF
NEW



State of New Jersey
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