



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

LARRY J. YATES,	)	ORDER DENYING REQUEST
Petitioner,	)	FOR STAY
	)	
v.	)	
	)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,	)	BPU DOCKET NO EC10120885U
Respondent	)	OAL DOCKET NO PUC 01958-11

**Parties of Record:**

**Larry J. Yates**, Petitioner, pro se  
**Sheree L. Kelly, Esq.**, Respondent, Public Service Electric and Gas Company

**BY THE BOARD:**

This matter involves a request by Larry J. Yates ("Petitioner") for a stay of the Board's Order filed July 20, 2012, which affirmed the Administrative Law Judge Kimberly A. Moss' determinations in the above-referenced customer billing dispute docket. On August 3, 2012, the Board received papers from Petitioner (the "filing") comprising a five-page letter erroneously dated June 30, 2012, which acknowledged dates occurring in July 2012 in the body of the letter. Petitioner's letter seems to outline how Petitioner calculates his time to appeal.


The court rules control filings of appellate pleadings and extensions of time to file appellate pleadings. R. 2:1 and R. 2:4-4(a). These issues are not before the Board.

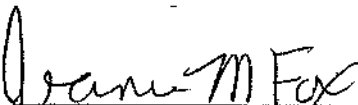
The standard for a motion for a stay requires the movant to make a showing of: (1) irreparable injury to the movant absent a stay; (2) a legally settled claim where relief sought is an available remedy at law; (3) a likelihood of success on the merits; and (4) a balancing of equities with no substantial harm to other parties or the public interest. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). By the filing, Petitioner appears to articulate his intended bases for appeal but does not show good cause or a basis to grant a stay. The Board **FINDS** that Petitioner has not established irreparable injury as matters which can be resolved through monetary relief alone are insufficient to constitute an irreparable harm under the Crowe standard. id. at 132. The


Board further FINDS that Petitioner has no likelihood of success on the merits where his service charges were accurately billed and reasonable. Therefore, the Board FINDS Petitioner did not meet the standard for granting a stay and the request is DENIED.

DATED: 9/13/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

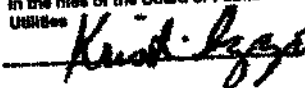
  
JEANNE M. FOX  
COMMISSIONER

  
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  


LARRY J. YATES

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10120885U

OAL DOCKET NO. PUC01958-11

SERVICE LIST

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**Y**

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2025 Cedar Lane, #167  
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*DMB*  
*Diegel-Beslow*  
*L. Hochstetler*  
*cust. serv. for*

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June 30, 2012

CASE MANAGEMENT

Kristi Izzo, Secretary  
**THE BOARD OF PUBLIC UTILITIES**  
44 South Clinton Avenue, 9th Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

NJ BPU  
MAILROOM

**COPY**

Re: **Larry J. Yates v. Public Service Electric & Gas (PSE&G)**  
**BPU DKT NO. EC10120885U**  
**OAL DKT NO. PUC01958-11**

To Secretary Izzo and Board members:

My name is Larry Yates, Petitioner in the above referenced matter. This letter is in response to the Order Denying Motion for Reconsideration dated July 20, 2012. Of note and concern is the Board's failure to comprehend the facts surrounding this matter. It would seem that there is either an inability to comprehend the English language or a level of incompetence so severe that it is unexplainable, inexcusable and completely unreasonable.

With all due respect I'm somewhat shocked that the Board would have the temerity to publish such a decision, which reads more like the fairy tale "The Emperor's New Clothes." The first issue is that my prior letter of June 22, 2012 was not a "motion for reconsideration" but a motion to "correct the Board's clerical error" concerning the fact that my exceptions were not taken into consideration because they were presumed to have been filed late, when in fact they were filed within time pursuant to the rules, which was clearly and concisely demonstrated in my letter of June 22, 2012 but contradicted in the Board's recent erroneous Order denying what it erroneously designated a motion for reconsideration.

See Current N.J. Court Rule 1:13-1, which provides the following:

Clerical mistake in judgments, orders or other parts of the record and errors therein arising from oversight and omission may at any time be corrected by the court on its own initiative or on the motion of any party, and on such notice and terms the court directs, notwithstanding the pendency of an appeal.

The issue, which is fatal in the instant matter, is the Board's presumption that my Petition challenges or disputes the "accuracy" of my bill, which is harmful error. As a matter of fact and for the record my Petition fails to mention much less challenge the "accuracy" of my bill but instead raises two simple questions and challenge for review. 1) Is PSE&G permitted to bill customers/consumers for the "delivery" of gas and electricity; and 2) Is this charge as it appears "fair", "just" and "reasonable".

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Moreover and equally fatal is the issue of "jurisdiction," which the Board has failed to properly address in its Order of July 20, 2012. This issue was addressed in a motion made before ALJ Moss to transfer the within matter to The Superior Court for disposition, a subject Judge Moss failed to mention much less address in her decision. The motion detailed the facts concerning why the Board is without "jurisdiction" in the instant matter with specificity, which the Board has omitted. In fact, the scope of consideration given this matter is so narrow and subjective that it would be impossible for any trier of fact to reach a rational conclusion.

This can easily be adduced by the Board's act of picking and choosing "sound bites" from the Petitioner's exceptions, which is an obvious but meritless attempt to misrepresent the facts and shield itself, the ALJ and the Utility from prosecution. To the contrary, the Board has provided clear and convincing evidence of Official Misconduct, Collusion and Fraud.

The legal arguments raised in my exceptions are listed as follows:

1. THE BOARD AND OAL LACKED JURISDICTION
2. TRANSFER OF THE MATTER IS PROPER
3. PETITIONER IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW
4. COMMENTS ON ANALYSIS AND DISPOSITION OF THE ALJ
5. A SHOWING OF IMPROPRIETY
6. CONCLUSION

For the Board to suggest that it reviewed these exceptions along with the supporting documents and found "nothing" that would cause the Board to alter, amend or modify the decision made by ALJ Moss is "unconscionable" and demonstrates a level of incompetence so severe that it warrants an internal investigation. The July 20, 2012 Order should be vacated in its entirety and the actions of the Board deemed "insanity."

Black's Law Dictionary provides the following:

**insanity, n.** (16c) Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility. • Insanity is a legal, not medical, standard. – Also termed *legal insanity*; *lunacy*.

For the record, the Petitioner is very familiar with the reconsideration process and the matter of Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) citing D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990) and the opinion of Judge Kleiner. I would first question or rather challenge the Board's remark that, "By its June 18, 2012 Order, the Board affirmed the findings of fact and legal analysis of the ALJ Moss and affirmed the finding that tariff charges levied by the Utility were earlier deemed as just and reasonable by the Board's prior order."

What prior order is the Board referring to? Specifically, what prior order deemed the tariff charge levied by the utility just and reasonable? Given that ALJ Moss specifically noted that the OAL only had "jurisdiction" to determine the "accuracy" of a bill in dispute and therefore never addressed the issues of "just" and/or "reasonable" as these issues were not

within ALJ Moss' "jurisdiction" makes the Board's remark a bold faced lie, which I assert is willful and deliberate for the purpose of misrepresenting the facts in an attempt to shield itself from prosecution for official misconduct and ALJ Moss for judicial misconduct.

The second challenge is to the Board's following remark and presumption that, "Petitioner's dissatisfaction with motion outcome during OAL proceedings and the allegation that his right to appeal is prejudiced by the record being devoid of the Board addressing the issue of Exceptions is without merit because Petitioner's right to appeal is not impaired by these decisions. Petitioner's January 24, 2012 Exceptions merely revisit his original arguments claimed during OAL proceedings regarding the impropriety of Respondent's delivery charges and his belief that Board Staff should be subject to additional claims."

Again, the Board's remark and presumption is harmful error. I am very much aware of the Appellate process and standard of review and specifically addressed this issue where I argued that because ALJ Moss dismissed my Third Party Complaint with prejudice, if the Board failed to transfer the matter to the Superior Court, my right to assert claims against the Board and its Staff could only be preserved through an appeal. Under the circumstances, the Board's failure to address my Exceptions simply clarifies the Board's level of incompetence or demonstrates the Board's misconduct by deliberately misrepresenting the facts. Whether my Exceptions revisit my original argument or not is irrelevant if the Board is unable to comprehend or determine the nature of that argument.

The Board's remarks are extremely vague, which the Petitioner asserts is willful and deliberate in an effort to avoid the relevant facts where the issue the Board fails to address is the fact that the relief I seek is not within the Board's jurisdiction. Therefore, since my complaint is one of tort, like my Third Party Complaint, which sought recovery and/or damages, just as ALJ Moss determined that, as a matter of law, neither the Board nor the OAL had jurisdiction to compel the Board or its Staff to join the within action or to adjudicate claims for damages or recovery, then likewise, the Board and the OAL are without jurisdiction to adjudicate the within matter, which triggered the motion for transfer.

Like the Board's recitation regarding jurisdiction, the observation made by the Board that the Petitioner participated in administrative proceedings and hearings for one year before moving for transfer is irrelevant. Notwithstanding the fact that ALJ Moss failed to mention much less address the motion in her decision, ALJ Moss failed to provide any findings of facts or conclusions of law in support, which is arbitrary, capricious and unreasonable. Likewise, the Board's failure to do the same in affirmance of ALJ Moss' decision is unexplained, unexcused and equally unreasonable.

Jurisdiction over subject matter may not be conferred by consent or be waived, and lack of such jurisdiction may be raised or noted at *any time* (emphasis added), but where subject matter jurisdiction is involved, court rules contain liberal provisions for transfers of actions among courts. Linder v. Linder, 126 N.J. Super. 466 (App. Div. 1974). Under this rule, salutary object of preventing miscarriage of action or proceeding because instituted in wrong court is as applicable where jurisdictional defect is lack of territorial jurisdiction as in case of any other kind of subject matter deficiency. State v. Duswalt, 153 N.J. Super. 399 (App. Div. 1977).

The Board's presumption that I'm dissatisfied with these proceedings is also plain error. I'm disgusted at this point as the evidence demonstrates that these proceedings are nothing more than a sham. It would seem the Board is of the opinion that it operates in a vacuum under its own jurisdiction, above the law and without regard to the public it serves or consequence regardless of its actions. Moreover, it would seem the Board believes the public to be stupid or without the ability to discern the difference between fact and fiction or truth and deception, which is not just harmful error but in fact fatal.

In reviewing the "fairy tale" the Board rendered on July 20, 2012 it's obvious that it didn't matter what argument was made by the Petitioner or the evidence provided, the Board's determination was pre-disposed regardless of the facts or the law. [HN4] Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either (1) the court has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence. Cummings, supra, 295 N.J. Super. 374.

For the record, the Petitioner's Exceptions clearly demonstrates, with specificity, the fact that ALJ Moss and the Board have grossly erred in their legal analysis and application of the law to the facts and failed to consider the relevant facts before them. Further, for all the foregoing, it is quite clear that (1) ALJ Moss expressed her decision based upon a palpably incorrect or irrational basis, and (2) it is obvious that ALJ Moss did not consider and/or failed to appreciate the Board's limited jurisdiction regarding the subject of Petitioner's complaint. Id.

Alternatively, if a litigant wishes to bring new or additional information to the court's attention which it could not have provided on the first application, the court should, in the interest of justice and in the exercise of sound discretion, consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour. Thus, the court must be sensitive and scrupulous in its analysis of the issues in a motion for reconsideration. Id.

Should the Board maintain its position, pursuant to N.J.A.C. 1:1-18.6(f) I respectfully request that the Order of June 18, 2012 be stayed until the statutory 45-day period to appeal the Final Decision has expired pursuant to New Jersey Court Rule 2:2-3 or until such time that an appeal of the within matter is concluded. And so we are clear and there is no misunderstanding on this matter, pursuant to N.J. Court Rule 2:4-1(b), "Appeals from final decisions or actions of state administrative agencies or officers, other than appeals from judgments of the Division of Worker's Compensation and other than those governed by R. 8:2 (tax matters) and by R. 4:74-8 (Wage Collection Section appeals), shall be taken within 45 days from the date of service of the decision or notice of the action taken.

Pursuant to N.J.A.C. 1:1-7.1(a), "Service shall be made in person; by certified mail, return receipt requested; by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served." Subsection (c) provides, "Service by mail shall be complete upon mailing." However, N.J. Court Rule 1:3-1. Computation of Time provides the following:

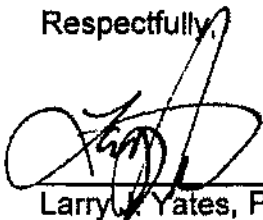
In computing any period of time fixed by rule or court order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday. In computing a period of time of less than 7 days, Saturday, Sunday and legal holiday shall be excluded.

N.J. Court Rule 1:3-3. **Additional Time After Service by Ordinary Mail** provides, "When service of a notice or paper is made by ordinary mail, and a rule or court order allows the party served a period of time after the service thereof within which to take some action, 3 days shall be added to the period." Here the final decision was made June 18, 2012 and mailed via regular mail on June 21, 2012 where service is not counted as being made until June 24, 2012, which is a Sunday where the date of service moves to Monday, June 25, 2012. Subsequently the time to respond or take action does not begin to run until June 26, 2012 where expiration of the 45 day period to appeal the within matter was Friday, August 10, 2012 not August 2, 2012 as noted earlier by Veronica Beke, DAG.

Further, the Petitioner's motion for "Reconsideration" tolled the time to appeal, see N.J. Court Rule 2:4-3(b), which Petitioner mailed via certified mail on June 22, 2012 and was delivered on June 24, 2012, which is a Sunday where service is counted as being made on Monday, June 25, 2012. The time to appeal is calculated to begin on June 26, 2012 where the time for the Petitioner to appeal has been tolled in its entirety. The Board's denial was rendered July 20, 2012 but forwarded to Petitioner via regular mail on July 24, 2012 where service is deemed complete on Friday, July 27, 2012. Accordingly, the time to appeal does not begin to run until Monday, July 30, 2012 where 45 days from that date makes the deadline to appeal September 13, 2012.

For all the foregoing, unless I receive something from the Board or Ms. Beke to the contrary, I will assume that my request for a stay will be determined no later than August 13, 2012, which if granted, will remain in effect until the conclusion of my appeal where I have up to and including Thursday, September 13, 2012 to file an appeal where if you do not receive service of my appeal by Monday, September 17, 2012, the Final Decision may be placed on the record and become effective on that date, which is September 17, 2012. Be further advised that a Notice of Tort Claim will follow shortly hereafter under separate cover.

Respectfully



Larry J. Yates, Petitioner

cc: Sheree L. Kelly, Esq., Eric Hartsfield, Director, and Veronica Beke, DAG





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**Board of Public Utilities**  
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CUSTOMER ASSISTANCE

LARRY J. YATES,  
Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,  
Respondent.

) ORDER DENYING MOTION  
) FOR RECONSIDERATION  
)  
)  
)  
) BPU DOCKET NO. EC10120885U  
) OAL DOCKET NO PUC 01958-11

Parties of Record:

Larry J. Yates, Petitioner, pro se  
Sheree L. Kelly, Esq., Respondent, Public Service Electric and Gas Company

BY THE BOARD:

On December 2, 2010, Larry J. Yates ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to the billing dispute with Public Service Electric and Gas Company ("Respondent") for utility services rendered. On February 14, 2011 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 N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was assigned to Administrative Law Judge ("ALJ") Kimberly A. Moss.

PROCEDURAL HISTORY

During the OAL contested case proceedings, Petitioner filed an amended petition on March 24, 2011, which continued to dispute billing charges and named Staff of the Board of Public Utilities ("Board Staff") as a third party defendant on an alleged tort claim for the purported failure of Board Staff in addressing his billing dispute claims. On April 6, 2011, Board Staff moved to dismiss Petitioner's third-party complaint against Board Staff. On April 15, 2011, Petitioner filed opposition to the Board Staff's motion to dismiss Petitioner's third-party complaint. On that date, Petitioner also filed a motion to strike the Respondent utility's answer as out-of-time. On May 3, 2011, ALJ Moss converted Board Staff's motion to a motion for summary disposition on the issue of whether to compel joinder of Board Staff as a respondent and granted Staff's motion

dismissing the third party complaint. On June 8, 2011, Respondent filed opposition to the motion to strike its answer and moved for summary disposition. By Order, dated July 15, 2011, ALJ Moss determined that Respondent's answer was timely filed and granted Respondent's motion for summary disposition in part, leaving open the sole issue of whether Respondent had properly and accurately billed Petitioner for delivery charges. A hearing in this matter was held on December 5, 2011. ALJ Moss directed Respondent to submit documents regarding its tariff. Said documents were forwarded to ALJ Moss and Petitioner on December 6, 2011. Although he was allowed to submit a reply to the tariff submissions, Petitioner made no such reply.

The Board received ALJ Moss's Initial Decision on December 22, 2011. In the Initial Decision, ALJ Moss entered findings of fact and law on the alleged overbilling of service and delivery charges. ALJ Moss found Petitioner to be a gas and electric customer of Respondent. ALJ Moss found the service charge to be a component of the delivery charge. ALJ Moss further found that Respondent's tariffs allowed the utility to bill residential customers for delivery and distribution charges. ALJ Moss found Petitioner's bills showed an additional three-cent capital adjustment charge consistent with Respondent's tariff, Original Sheet No. 66 effective June 7, 2010, and an additional nine-cent capital adjustment charge consistent with Respondent's tariff, Revised Original Sheet 66, effective July 24, 2011. As noted by ALJ Moss in the July 15, 2011 Order, tariffs have the weight of law whether or not the customer is actually aware of it. Essex Cty. Welfare Bd. v. N.J. Bell Tel. Co., 126 N.J. Super. 417, 421 (App. Div. 1974). Accordingly, ALJ Moss concluded that the tariff sheets conclusively show that the charges to Petitioner were accurate, that Petitioner had not supported his case by a preponderance of the evidence, and dismissed the amended petition.

The Board, by its January 18, 2012 Order of Extension, requested and was granted a 45-day extension, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, in order to appropriately review the record and to issue a final decision. At that time, the administrative record was closed. Subsequent orders of extension were issued on March 1, 2012 and April 19, 2012 to appropriately review the voluminous record including exceptions and replies.

Following the Board's published January 18, 2012 Order of Extension, Petitioner submitted Exceptions received by the Board on January 24, 2012. These Exceptions included a one-page cover letter, a one-page Certificate of Service, a twenty-five page letter brief, a nine-page certification/statement of facts and exceptions, and a fifty-five page appendix in support of the Exceptions. Of the many arguments raised, Petitioner mainly takes exception with the Initial Decision in that: (1) the ALJ had erred in her legal analysis and application of law to facts by failing to consider facts before the ALJ and Petitioner's opposition to the utility's request to answer out-of-time (Exceptions at 4); (2) Petitioner argues the charges were not reasonable (Exceptions at 7); (3) the ALJ's dismissal of Petitioner's third party complaint against Board Staff was "harmful error" (Exceptions at 14); (4) the ALJ acted with impropriety by rendering her decision on the same day Petitioner's motion was received to demonstrate that the ALJ was aware of Petitioner's request for transfer prior to submitting its decision to the agency head (Exceptions at 20); and by alleging his right to appeal is jeopardized.

After review and consideration of the entire record that existed at the time and by Order, dated June 18, 2012, the Board affirmed the findings of fact and conclusions of law in the Initial Decision as reasonable and, accordingly, accepted those findings and further found that the Initial Decision should be adopted in its entirety.

In its June 18, 2012 Order, the Board noted Petitioner's Exceptions as out-of-time and did not consider them. N.J.A.C. 1:1-18.4(a) provides that a party may file written exceptions with the Board by serving a copy of the exceptions to the Board, all other parties, and the judge within 13 days from the date of the judge's initial decision was mailed. Any opposing party may file a reply to the exception with the agency within five days. N.J.A.C. 1:1-18.4(b)(3)(d). If exceptions are properly filed after receipt of the initial decision, the Board disposes of the exceptions and answers on the papers. N.J.A.C. 14:1-8.2. However, Respondent did not reply to Petitioner's Exceptions. As noted earlier, the Initial Decision was submitted to the Board on December 22, 2011, making the January 24, 2012 exceptions submission by Petitioner late by at least three weeks. Accordingly, the Board did not formally address them, consistent with N.J.A.C. 1:1-18.4(a). In its June 18, 2012 Order, the Board found that Petitioner's Exceptions were submitted out-of-time pursuant to N.J.A.C. 1:1-18.4(a) and concluded that the ALJ's decision that the petition in the matter be dismissed was correct.

On June 27, 2012, the Board received papers from Petitioner (the "June 27, 2012 filing") including a two-page letter, dated June 22, 2012, followed by a certified mail return receipt copy, a copy of a one-page cover letter, dated January 20, 2012, followed by the certificate of service challenging the date the Initial Decision was received by Petitioner and acknowledging the Exceptions submitted.

### **DISCUSSION AND FINDINGS**

Upon receipt of Petitioner's June 27, 2012 filing and by this Order, the Board converts Petitioner's June 27, 2012 filing to a motion for reconsideration of the Board's refusal to consider the late-filed Exceptions as within time.

N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. Petitioner did not file a motion or otherwise conform to the requirements of the regulation. However, the Board has the power to relax its administrative regulations if doing so permits the Board to effectively carry out its statutory functions. N.J.A.C. 14:1-1.2.

After review and consideration of the entire record, the Board **FINDS** that Petitioner's June 27, 2012 filing shall be deemed a motion for reconsideration. A motion for reconsideration may be filed with the Board within 15 days of the issuance of any final decision by the Board. The Board's order adopting the initial decision was published on June 18, 2012 and Petitioner's letter request was filed with the Board on June 27, 2012, therefore the Board **FINDS** that Petitioner's letter request filed on June 27, 2012 is a Motion for Reconsideration consistent with N.J.A.C. 14:1-8.6.

This Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the issues raised by Petitioner are sufficient to warrant reconsideration or modification.

Reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to

appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). A party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). The moving party must show that the action was arbitrary, capricious or unreasonable. Ibid. By its June 18, 2012 Order, the Board affirmed the findings of fact and legal analysis of ALJ Moss and affirmed the finding that tariff charges levied by the utility were earlier deemed as just and reasonable by the Board's prior order. Petitioner's dissatisfaction with motion outcomes during OAL proceedings and the allegation that his right to appeal is prejudiced by the record being devoid of the Board's addressing the issue of Exceptions is without merit because Petitioner's right to appeal is not impaired by these decisions. Petitioner's January 24, 2012 Exceptions, merely revisit his original arguments claimed during OAL proceedings regarding the impropriety of Respondent's delivery charges and his belief that Board Staff should be subject to additional claims.


The Board may relax certain filing rules for good cause shown. N.J.A.C. 14:1-1.2. In Exceptions, Petitioner argues that the ALJ's December 27, 2011 denial of his December 20, 2011 motion for transfer to the Superior Court, Law Division for disposition was improper. (Exceptions at 2, 19). The jurisdiction of the OAL is derived from the transmitting agency, here the Board. Wood v. Dept. of Cmty. Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990) citing N.J.S.A. 52:14B-1 to -15. Therefore, jurisdiction over the Complaint must be derived from the transmitting agency. Wood supra 243 N.J. Super. at 196. The OAL is an independent office in the Executive Branch of the State Government, created by the Legislature and given the power to prescribe and enforce its own rules of practice and procedure. Ibid. The OAL's function is to conduct administrative hearings on behalf of the transmitting agency, and the OAL's authority is derivative of the authority of the transmitting agency as an adjudicative extension of that transmitting agency which retains authority to render the final administrative determination in this case. Ibid. Since the Board determined the matter to be a contested case consistent with N.J.A.C. 14:1-8.1, the Board authorized the OAL to conduct and complete contested case proceedings. The Board notes that Petitioner participated in administrative proceedings and hearings for one year, from December 2010 to December 2011, before making the motion before the ALJ. The Board **FINDS** that the ALJ's denial of the motion for transfer to the Superior Court, Law Division was correct, and that the ALJ appreciated the significance of jurisdictional limitations on a billing dispute to fall within administrative proceedings. See Cummings v. Bahr, supra, 295 N.J. Super. at 384. Petitioner's Exceptions raise the same arguments as those raised before the ALJ. Thus, even if the Board had considered the Exceptions, the Board would not have reached a different outcome because there is no new issue of fact or law raised by the Exceptions where Petitioner had notice, an opportunity to be heard, and his arguments were properly considered by the ALJ below. The Board's rejection of his Exceptions as untimely does not show that the Initial Decision is fatally flawed or wrong to the extent that the outcome would change.

Following extensive review, the Board **FINDS** that nothing in Petitioner's June 27, 2012 filing requires the Board to modify or otherwise reconsider its decision to exclude the Exceptions because good cause has not been shown to relax the rule requiring timely filing of exceptions. The Board **HEREBY FINDS** that the motion for reconsideration has not presented any facts or evidence of changed circumstances which would warrant rejection of the Board's June 18, 2012 Order or which meets any of the requirements of the regulation. Accordingly, the Board **HEREBY DENIES** Petitioner's June 27, 2012 filing.


The Board **FURTHER FINDS** that there is no basis to modify its June 18, 2012 Order Adopting the Initial Decision, which, in part, rejected the January 24, 2012 Exceptions as filed untimely.

DATED: 7/20/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

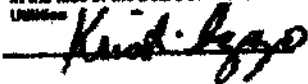
  
NICHOLAS CASSELLA  
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MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
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in the files of the Board of Public  
Utilities



LARRY J. YATES

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10120885U  
OAL DOCKET NO. PUC01958-11

SERVICE LIST

Larry J. Yates  
492C Cedar Lane, #167  
Teaneck, New Jersey 07666

Sheree L. Kelly, Esq.  
PSEG Services Corporation  
80 Park Plaza – T5G  
Newark, New Jersey 07102-4194

Eric Hartsfield, Director  
Julie Ford-Williams  
Division of Customer Assistance  
Board of Public Utilities  
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P.O. Box 350  
Trenton, New Jersey 08625-0350

Veronica Beke, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

LARRY J. YATES,	)	ORDER ADOPTING INITIAL
Petitioner	)	DECISION
v.	)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,	)	BPU DKT NO EC10120885U
Respondent	)	OAL DKT NO PUC01958-11

Parties of Record:

Larry J. Yates, Petitioner *pro se*  
Sheree L. Kelly, Esq., Respondent, Public Service Electric and Gas Company

BY THE BOARD:

On December 2, 2010, Larry J. Yates ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a 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 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") Kimberly A. Moss.

During the contested case, Petitioner filed an amended petition and motion on March 24, 2011. On April 6, 2011, the Board moved to dismiss Petitioner's third-party claim against the Board. On April 15, 2011, Petitioner filed opposition to the Board's motion to dismiss Petitioner's third-party claim against the Board, admits non-payment of the service charges, and moved to strike Respondent's answer as out of time. On May 3, 2011, ALJ Moss converted the Board's motion as a motion for summary decision on the issue of whether to compel joinder of the Board as a respondent in the matter, granted the motion to dismiss, and dismissed the complaint. On June 8, 2011, Respondent filed opposition to the motion to strike its answer and, in addition, moved for summary judgment. In addition to dismissing the third-party claim against the Board, by Order dated July 15, 2011, ALJ Moss determined that Respondent's answer was timely filed

and granted Respondent's Motion for Summary Judgment in part leaving open the sole issue of whether Respondent had properly and accurately billed Petitioner for distribution charges. A hearing in this matter was held on December 5, 2011, when the ALJ directed Respondent to submit documents regarding its tariff. Said documents were forwarded to ALJ Moss and Petitioner on December 6, 2011. Although he was allowed to submit a reply to the tariff submissions by December 16, 2011, Petitioner made no such reply.

Basically, Petitioner's position is that he was charged several cents above the rate he should have been paying for delivery charges. Respondent's tariff, Original Sheet No. 66 effective June 7, 2010, allowed Respondent to charge an additional three cents per month for capital adjustment charges. Respondent also introduced Revised Original Sheet 66, effective July 24, 2011, which allowed Respondent to charge an additional nine cents per month for capital adjustment charges. As noted by ALJ Moss in the Order dated July 15, 2011, tariffs have the weight of law whether or not the customer is actually aware of it. Essex County Welfare Board v. New Jersey Bell Telephone Company, 126 N.J. Super. 417, 421 (App. Div. 1974).

As the submitted tariff sheets conclusively showed that the charges to Petitioner were accurate, the ALJ determined that Petitioner had not supported his case by a preponderance of the evidence and that the amended petition in this matter should be dismissed. The Board AFFIRMS the findings of the ALJ.

The Board would note that Petitioner submitted exceptions to the Initial Decision on January 24, 2012. N.J.A.C. 1:1-18.4(a) provides that a party may file written exceptions with the Board by serving a copy of the exceptions to the Board, all other parties, and the judge within 13 days from the date of the judge's initial decision was mailed. The utility may file a reply to the exception with the agency within five days. N.J.A.C. 1:1-18.4 (b)(3)(d) If exceptions are properly filed after receipt of the initial decision, the Board disposes of the exceptions and answers on the papers. N.J.A.C. 14:1-8.2. The Initial Decision here was submitted to the Board on December 22, 2011, making the exceptions submission by Petitioner late by at least three weeks. Accordingly, the Board will not formally address them, consistent with N.J.A.C. 1:1-18.4(a).

After review and consideration of the entire record, the Board HEREBY FINDS that the findings of fact and conclusions of law set out by ALJ Moss in the Initial Decision are reasonable and, accordingly, ACCEPTS those findings. The Board further FINDS that the Initial Decision should be adopted in its entirety, as if attached hereto. The Board additionally FINDS that Petitioner's



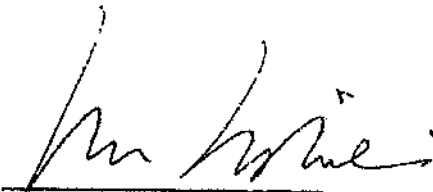
Exceptions were submitted out-of-time, consistent with N.J.A.C. 1:1-18.4(a). Accordingly, the Board CONCLUDES that the petition in this matter be and is HEREBY DISMISSED.

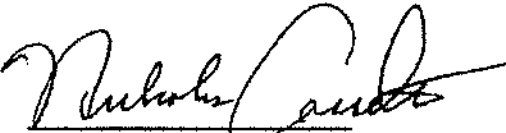
DATED: 6/18/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARYANNA HOLDEN  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

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Sambetti*



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

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**INITIAL DECISION**

OAL DKT. NO. PUC 01958-11

AGENCY DKT. NO. EC10120885U

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BOARD OF PUBLIC UTILITIES  
REMARK, N.J.

**LARRY J. YATES,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,**

Respondent,

---

**Larry J. Yates**, petitioner, appearing pro se

**Sheree Kelly**, Esq., for respondent, Public Service Electric and Gas Company

Record Closed: December 16, 2011

Decided: December 22, 2011

BEFORE KIMBERLY A. MOSS, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Larry J. Yates (petitioner or Yates), filed a petition with the Board of Public Utilities (BPU) on November 29, 2010, regarding a billing dispute. Petitioner is disputing delivery charges and next charges. The matter was transmitted to the Office of Administrative Law (OAL) and filed on February 18, 2011. On April 15, 2011, petitioner filed a reply in opposition to the BPU's motion to dismiss his third-party claim. In the

reply he also filed a motion to strike respondent, Public Service Electric and Gas's (PSE&G) answer because it was filed out of time. Due to inadvertence that count of the motion was not addressed in the prior Order. On June 8, 2011, PSE&G filed opposition to petitioner's motion to strike the answer, as well as filing a motion for summary decision. Yates filed a response to PSE&G's motion for summary decision on June 23, 2011. Included in Yates's response was a motion to compel discovery. On July 15, 2011, I Ordered that PSE&G's answer was timely filed. In addition PSE&G's motion for summary decision was partially granted. The only open issue remaining was whether PSE&G accurately billed Yates for the distribution charges. A hearing was held on December 5, 2011. I required PSE&G to submit documents regarding its tariff. This document was submitted on December 6, 2011. Yates had until December 16, 2011, to submit a reply to PSE&G's tariff submissions. Yates did not file a reply to PSE&G's tariff submissions. I closed the record on December 16, 2011.

### **FACTUAL DISCUSSION**

I FIND the following are undisputed FACTS in this case.

Yates is a gas and electric customer of PSE&G.

### **Testimony**

#### **Larry Yates**

Yates testified that he believes that his delivery charges were not accurate because the delivery charge was more than fifty percent of the bill. He submitted bills that showed the service charges were \$2.46 and \$2.52, both of which are above the \$2.43 listed in the tariff, Original Sheet 93, with an effective date of June 10, 2010. He did not receive an explanation of what the service charge was until September 2011. He never received notification of the tariff.

Brian Hart

Brian Hart (Hart) is a customer operations supervisor in the billing department of PSE&G. He is familiar with the Yates account. The service charge is a component of the delivery charge. Hart stated that the PSE&G is allowed to charge an additional three cents on the service charge as a capital-adjustment charge. The tariff Original Sheet Number 66 Electric Rate Schedule allows for this charge. This three-cent capital-adjustment charge is a constant charge. There are also fluctuation charges.

Respondent submitted a document entitled "First Revised Sheet No. 66 Superseding Original Sheet No. 66." This document, which has an effective date of July 24, 2011, allows a capital-adjustment charge of nine cents per month.

I **FIND** the following are the **FACTS** in this case:

The service charge is component of the delivery charge. Original Sheet No. 66 of PSE&G's electrical tariff, with the effective date of June 7, 2010, allows PSE&G to charge an additional three cents per month for capital-adjustment charges. The First Revised Sheet No. 66 Superseding Original Sheet No 66 of the PSE&G electrical tariff, with the effective date of July 24, 2011, allows PSE&G to charge an additional nine cents per month for capital adjustment charges.

**LEGAL ANALYSIS AND CONCLUSION**

In Essex County Welfare Board v. New Jersey Bell Telephone Company, 126 N.J. Super. 417 (App. Div.1974), the Court stated:

It is well established that a tariff required by law to be filed by a telephone company is not a mere contract; it is the law. Carter v. American Tel. & Tel. Co., 365 F.2d 486, 496 (5 Cir. 1966), cert. den., 385 U.S. 1008, 87 S. Ct. 714, 17 L. Ed. 2d 546 (1967); Shehl v. Southwestern Bell Tel. Co., 382 F.2d 627, 629 (10 Cir. 1967). As such, it is binding upon subscribers whether the customer actually knows of the regulation or not. Warner v. Southwestern Bell Tel. Co., 428

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S.W. 2d 596 (Mo. Sup. Ct. 1968); Alcazar v. Southwestern  
Bell Tel. Co., 353 S.W. 2d 933, 936 (Tex. Civ. App. 1962).

The tariff that was filed by PSE&G allows it to charge residential customers for delivery and distribution charges. The tariff has the effect of law. Original Sheet No. 66 of the PSE&G electrical tariff with the effective date of June 7, 2010, allowed PSE&G to charge capital adjustment charges of an additional three cents per month. First Revised Sheet No. 66 Superseding Original Sheet No. 66, with an effective date of July 24, 2011, allows PSE&G to charge capital adjustment charges of an addition nine cents per month.

I **CONCLUDE** that petitioner did not prove by a preponderance of the evidence that his services charges were inaccurately billed because PSE&G billed petitioner in accordance with its tariff.

**ORDER**

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

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

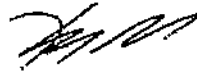
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OAL DKT. NO. PUC 01958-11

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 22, 2011



\_\_\_\_\_  
DATE

\_\_\_\_\_  
KIMBERLY A. MOSS, ALJ

\_\_\_\_\_  
Date Received at Agency:

\_\_\_\_\_  
Date Mailed to Parties:

\_\_\_\_\_  
ljb

**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

David Hart

**EXHIBITS**

**For Petitioner:**

- P-1 May 2011 PSE&G Billing Statement
- P-2 Original Sheet No. 93 PSE&G Electrical Tariff
- P-3 January 2011 PSE&G Billing Statement
- P-4 February 2011 PSE&G Billing Statement
- P-5 March 2011 PSE&G Billing Statement
- P-6 April 2011 PSE&G Billing Statement
- P-7 May 2011 PSE&G Billing Statement
- P-8 July 2011 PSE&G Billing Statement
- ~~P-9 August 2011 PSE&G Billing Statement~~
- P-10 October 2011 PSE&G Billing Statement
- P-11 September 2011 PSE&G Billing Statement

**For Respondent:**

- R-1 Original Sheet No. 66 of the Electrical Tariff
- R-2 First Revised Sheet No. 66 Superseding Original Sheet No. 66