



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/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

PETER TRIESTMAN,  
Petitioner

v.

PUBLIC SERVICE ELECTRIC AND GAS  
COMPANY,  
Respondent

ORDER OF EXTENSION

BPU DOCKET NO. EC12030239U  
OAL DOCKET NO. PUC5419-12

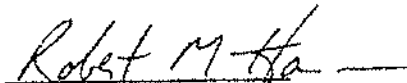
(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on August 28, 2012. By previous Order of Extension, the period for issuing a Final Decision was extended to November 26, 2012. Prior to that date, the Board requests a 45-day extension of time for issuing the Final Decision in order to review the entire record in this matter due to the interruptions caused by Hurricane Sandy.

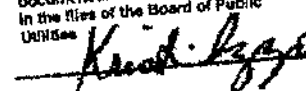
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until January 10, 2013.

DATED: 11/20/12

BOARD OF PUBLIC UTILITIES  
BY<sup>1</sup>:

  
ROBERT M. HANNA  
PRESIDENT

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  


<sup>1</sup> Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 11/20/12

cc: Service List Attached

DATED: 11/20/12

*Laura Sanders*

\_\_\_\_\_  
LAURA SANDERS, ACTING  
DIRECTOR & CHIEF  
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 11/20/12

Date Board mailed executed Order to Parties: 11/21/12

PETER TRIESTMAN

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC12030239U  
OAL DOCKET NO. PUC5419-12

SERVICE LIST

Peter Triestman  
113 Monroe Street, Ste 4  
Newark, New Jersey 07105

Alexander C. Stern, Esq.  
PSEG Services Corporation  
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Eric Hartsfield, Director  
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P.O. Box 350  
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124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

filed  
8/29/12



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

**INITIAL DECISION**

OAL DKT. NO. PUC 05419-12

AGENCY DKT. NO. GC12030239U

**PETER TREISTMAN,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC**

**AND GAS COMPANY,**

Respondent.

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**Peter Treistman, pro se**

**Alexander Stern, Esq., for respondent**

Record Closed: July 27, 2012

Decided: August 14, 2012

**BEFORE KIMBERLY A. MOSS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, Peter Treistman (Treistman), disputes bills by respondent, Public Service Electric and Gas (PSE&G). He alleges that there was a diversion of service. Treistman's petition was filed with the Board of Public Utilities (Board) on March 12, 2012. The matter was transmitted to the Office of Administrative Law (OAL) and filed on April 24, 2012. In 2011, Treistman filed a petition that was before the OAL on the

same issue. Petitioner failed to appear for the hearing on December 12, 2011. Petitioner sent a letter to the BPU stating he thought that a telephone conference, not a hearing, was scheduled for December 12, 2011. A prehearing conference was held on May 14, 2012. The prehearing order stated that petitioner was to produce discovery by May 21, 2012. Respondent was to reply to discovery by June 4, 2012. Any discovery motions were to be filed by June 15, 2012, and any responses to discovery motions were to be filed by June 27, 2012. No motion was received by June 15, 2012. On July 2, 2012, a status conference was held. At that time petitioner stated that he was going to file a discovery motion. It was agreed that petitioner would send the motion on July 2, 2012, and respondent had until July 20, 2012, to respond to the motion. Petitioner's motion was received on July 6, 2012. Respondent's reply was received on July 11, 2012. Petitioner's motion was denied. The hearing date was held on July 27, 2012. I closed the record at that time.

### **FACTUAL DISCUSSION AND FINDINGS**

The following is undisputed, and therefore **FOUND as FACT**:

Treistman is a gas and electric customer of PSE&G. He lives at 115 Monroe Street, Newark, New Jersey. The building has four floors. Petitioner lives on the fourth floor. The first two floors have commercial tenants and the third floor is vacant. On February 4, 2011, Pete Sequeira (Sequeira), a field service representative of PSE&G came to the premises. After Sequeira's visit, Treistman's gas service was billed at the residential rate. On December 8, 2011, Sequeira was sent to the premises to investigate if there was a diversion of service. Treistman's electrical service was changed from commercial to residential in December 2011. Petitioner does not contest the accuracy of the gas or electric meters. Treistman has made two payments to PSE&G since 2009. He paid \$2000 on or about February 1, 2011, and \$1656 on or about February 9, 2011.

## Testimony

### Peter Treistman

Treistman has lived at 113 Monroe Street for four years. The building was previously a warehouse. There are conduits that run through his apartment. In the winter his bills are approximately \$1000 per month for gas, and \$400 per month for electric. His total bill from June 6, 2009, to July 8, 2012, is \$33,645.28. He requested a diversion of service investigation. The investigation revealed that there were twenty-seven circuit breakers; one of which was connected to the air conditioner. It also revealed that one of the circuits provides electricity to the stairway on each floor in the building. The stairway has lights from the first floor to the fourth floor. PSE&G's report stated that there was no diversion of service. Petitioner has received bills from PSE&G marked "occupant [for usage] on the third floor."

The building has steel and glass windows. He sealed and corked all of the windows in his apartment except one. He insulated the walls in his apartment. The building has six five-ton air conditioner units on the roof. The air conditioner is wired to his panel. There are two space heaters which use gas in his apartment that he shuts off in April and May. The space heaters are over twenty years old but well maintained. When the space heaters are shut off, his bill still registers consumption.

Petitioner wrote to PSE&G beginning in May 2009, stating that he was being billed at commercial rates when he should have been billed at residential rates. Petitioner was re-billed for gas in February 2011 at the residential rates. The rebilling was done at the March 2011 rates not the prior rates. Petitioner did calculations of his gas usage based on Energy Star. These calculations showed that PSE&G over-billed him for gas in the amount of \$1788. Petitioner has no experience with utility accounts and rates.

Petitioner does not have a degree in engineering. He works in furniture restoration and architectural woodwork. Petitioner does not have a lease with his

landlord. He does not have an agreement with the landlord requiring him to pay for the lighting in the stairwell of the building.

Ed Sullivan

Ed Sullivan (Sullivan) is employed by PSE&G. He is the liaison with the BPU and is involved with matters in OAL. He reviewed the field reports and statement of account in this matter. Petitioner's prior account was closed by PSE&G with a \$9,000 balance due to petitioner's bankruptcy. Petitioner's current account began on June 8, 2009. In February 2011 a deferred payment plan was initiated for petitioner. The plan called for petitioner to pay \$1656 monthly in addition to the current monthly charges. Petitioner made one payment of \$1656.

PSE&G did not find a diversion of service. When there is a diversion of service the meter would show an interconnection. There would be wires connected to the meter if there was a diversion. Landlords and tenants can have agreements where a tenant would agree to be responsible for the hallway lighting bill. Sullivan does not know anything about petitioner's lease. If it was discovered that petitioner was not responsible for the payment of the lights on the stairway, more follow-up should have been done.

Petitioner's rate was changed in February 2011 from a commercial rate to a residential rate. When comparing the residential and commercial rates from June 2009 to February 2011, petitioner benefited more from the commercial rate. Petitioner's apartment was a large loft-type space with a rear wall made of glass. Petitioner's current outstanding balance is \$33,655.38.

There are two types of diversion of service. One is diversion directly from PSE&G and the other is third-party diversions. PSE&G only owns the meters. It does not own the pipes and wiring of buildings.

When testing for diversion of service, if the breakers are shut off on a given floor and the only electricity that went out was on that floor, it indicates that there is no

diversion. If the gas is shut off and the meter stops spinning that indicates that there is no diversion.

Pete Sequeira

Pete Sequeira (Sequeira) is employed by PSE&G in the field service division. Part of his job includes diversion of service investigations. Petitioner was concerned regarding diversions of service and the rates being incorrect. His February 4, 2011, investigation was not in regard to a diversion of service. He did not inspect the apartment at that time.

Sequeira conducted a diversion of service investigation on December 8, 2011. When there is a diversion of services there is usually evidence of tampering with the meter or splitting wires. There was no evidence of cross-wiring or tampering with the meter in this matter. He shut off the circuit breakers and the meter stopped. When he turned the gas off the meter stopped. If there is a diversion of service by a landlord, PSE&G tries to determine the amount of the diversion and bills the landlord.

Sequeira is not an electrician and did not check the internal wiring. His sole investigation into the diversion was shutting off the breakers.

On the two occasions that he went to the premises he was not let into petitioner's apartment. He was at the door. He could see two space heaters as well as electrical appliances in the kitchen from the door.

Having heard the testimony, observed the witnesses, and reviewed the exhibits, I **FIND** the following additional **FACTS**:

There is a breaker in petitioner's apartment marked "air conditioner," which controls eight florescent lights in the stairwell of the building. There are two lights on each floor in the stairwell all wired to petitioner's meter. Petitioner contacted PSE&G in May 2009, stating that he was being billed at a commercial rate when he should have been billed at a residential rate. Petitioner did not provide any evidence that the



PSE&G bills that he received marked occupant for the third floor were charged to his account. Petitioner does not have a lease with his landlord. Petitioner did not have an agreement with the landlord to pay the electric bill for the lights in the stairwell.

### **LEGAL ANALYSIS AND CONCLUSIONS**

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters which 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 tended 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).

One of the issues in this matter is whether petitioner experienced a diversion of service. N.J.A.C. 14:3-7.8 provides in part:

(b) Each electric, gas, water and/or wastewater utility shall include in its tariff provisions ensuring that tenant-customers shall not be required to pay for service supplied outside their premises without the tenant-customers' consent.

(c) Each electric, gas, water and/or wastewater utility shall notify tenant-customers who apply for service that if the utility's tariff provides for billing through one meter for the tenant-customers' own usage and for service diverted outside the tenant-customers' premises, the tenant-customers may not be required to pay for such diverted service absent their consent or cooperation for such service.

(d) Each utility shall investigate alleged diversions as follows:

1. When a tenant-customer alleges in good faith that the level of consumption reflected in his or her utility bill is unexplainably high, the tenant-customer may request the utility supplying gas, electricity, water and/or wastewater service to conduct a diversion investigation at no cost to the customer;

2. Such request shall be made in writing by the tenant-customer by completing and returning to the utility a diversion investigation application provided by the utility;
3. The application shall state that, if the tenant-customer has made one or more previous diversion complaints in the previous 12-month period, which failed to uncover a diversion of utility service, the utility may bill the customer for the cost of the second and subsequent investigations;
4. The utility shall investigate the alleged diversion within two months of the receipt of the investigation request. Each diversion investigation shall include a meter test conducted in accordance with N.J.A.C. 14:3-4.4;
5. The utility shall have the right of reasonable access pursuant to N.J.A.C. 14:3-3.6. For purposes of utility access, the alleged diversion is presumed to constitute a hazardous condition until the utility investigates;
6. If, as a result of such investigation, the utility determines that the service from the pipes and/or wires serving the tenant-customer has been diverted, the utility shall notify the landlord or his or her agent and instruct him or her to correct the diversion within 30 days through rewiring or repiping. However, this provision shall in no way prohibit a utility from disconnecting service if the utility determines that an unsafe condition exists;
7. If a diversion is found, the utility shall attempt to determine the identity of the beneficiary;
8. A tenant-customer seeking relief shall be responsible for furnishing to the utility the identity and address of the landlord or agent, and of the beneficiary, if known;
9. Additionally, the tenant-customer shall provide any other information, which may assist the utility in its investigation;
10. The utility shall furnish to the tenant-customer, the tenant-customer's landlord, and to the beneficiary (if different from the landlord) within 14 days of the investigation, a written report on the findings of the investigation. This report shall include information on the estimated cost of diverted service based upon prior use, degree day analysis, load study and/or cooling degree hours, whichever is appropriate;
11. If the utility locates a diversion, the utility shall attempt to reach an agreement with the parties involved or, in lieu of

such agreement, proceed to the conference described in (f) below; and

12. If no diversion is located, these diversion proceedings shall end when the utility has completed and filed its investigation report pursuant to (j) below.

This petition concerns the issues of whether there was a diversion of services and whether petitioner was billed at the proper residential rates. It is clear from the December 8, 2011, report of Sequeira that the lights in the stairwell of the building were wired to a circuit breaker of petitioner. The lights that are on each of the four floors of the stairwell are clearly outside of the petitioner's premises. Petitioner did not have an agreement with the landlord to pay the electric bill for the lights in the stairwell. It is clear that there was a diversion with regard to the lights in the stairwell.

Petitioner complained to PSE&G that he was being billed at commercial rates instead of residential rates beginning in May 2009. PSE&G began billing petitioner for gas at residential rates in February. It began billing petitioner for electric at residential rates in December 2011.

I **CONCLUDE** that petitioner experienced a diversion of service because one of his breakers provided service to the lights in the stairwell of the building. Those lights were outside of his premises.

I further **CONCLUDE** petitioner was incorrectly billed at commercial rates for gas until February 2011 and incorrectly billed at commercial electric rates until December 2011.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that PSE&G determine the amount of the diversion of service that occurred by virtue of petitioner being billed for the lights in the stairwell and contact petitioner's landlord to correct the diversion of service.

It is further **ORDERED** that PSE&G re-bill petitioner's gas charges from July 2009 thru February 2011 at the residential rates that were in effect at that time.

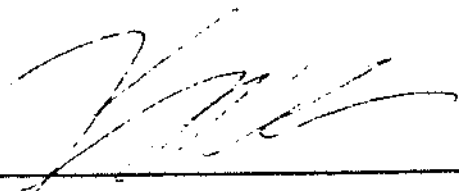
It is further **ORDERED** that PSE&G re-bill petitioner's electric charges from July 2009 thru December 2011 at the residential rates that were in effect at that time.

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

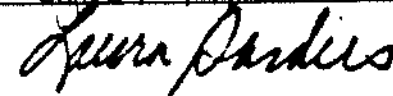
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is 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, 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.

8-14-12  
\_\_\_\_\_  
DATE

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

Date Received at Agency:

August 14, 2012  
  
\_\_\_\_\_

Date Mailed to Parties: August 20, 2012  
ljb

\_\_\_\_\_  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

**WITNESSES**

**For Petitioner:**

Peter Treistman

**For Respondent:**

Ed Sullivan

Pete Sequeira

**EXHIBITS**

**For Petitioner:**

- P-1 (A) Various Letters to the Board of Public Utilities from Treistman
- P-2 (B) PSE&G bill for July 2012
- P-3 (C) PSE&G Field Report dated December 8, 2011
- P-4 (D) Various PSE&G Bills to Occupant 113 Monroe Street, Ste 3
- P-5 (E) Invoice of Alfred Plumbing dated January 3, 2010
- P-6 (F) Petitioner's calculations of PSE&G Gas Bill
- P-7 (G) Electric Load Consumption
- P-8 (H) Heat and Electric Comparison to Similar Size Houses in Newark

**For Respondent:**

- R-1 PSE&G Field Report dated February 4, 2011
- R-2 Gas Meter Test dated October 11, 2011
- R-3 Statement of Account for Peter Treistman
- R-4 Electric Meter Test dated October 20, 2011
- R-5 PSE&G Field Report dated December 8, 2011