



Agenda Date: 4/27/16
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

BRYAN D. JONES and MEGAN E. PURCELL,)	ORDER ADOPTING INITIAL
Petitioners,)	DECISION
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	
Respondent.)	BPU Docket No. EC15070755U
)	OAL Docket No. PUC 17951-15

Parties of Record:

Bryan D. Jones and Megan E. Purcell, Petitioners,¹ appearing *pro se*²
Alexander C. Stern, Esq. on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:

PROCEDURAL HISTORY

By petition filed with the Board of Public Utilities (“Board”) on June 27, 2015 (“Petition”), Bryan D. Jones and Megan E. Purcell (“Petitioners”) disputed billing charges associated with electric service provided by Public Service Electric and Gas (“PSE&G” or “Respondent”) (collectively, “Parties”). On September 18, 2015, PSE&G filed an answer to the Petition (“Answer”). After receiving Respondent’s Answer, on November 6, 2015 the Board transferred the matter to the Office of Administrative Law (“OAL”) for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

This case was assigned to Administrative Law Judge (“ALJ”) Kimberly Moss. A prehearing conference was conducted by ALJ Moss on December 7, 2015 and on December 8, 2015, ALJ Moss entered a prehearing order scheduling the hearing for February 8, 2016. On January 8, 2016, the matter was transferred to Chief ALJ Laura Sanders. On March 11, 2016, ALJ Sanders held an evidentiary hearing on the matter. The record was closed on March 11, 2016.

¹ The caption of the Initial Decision mistakenly refers to “Meagan E. Purcell.” This Order reflects the correct spelling of Ms. Purcell’s first name: “Megan”.

² Although both Petitioners signed the Petition, only Petitioner Jones appeared at the hearing.

On March 14, 2016, ALJ Sanders issued an Initial Decision finding in favor of Respondent, dismissing the Petition. No exceptions were filed.

BACKGROUND

Petitioners are challenging the amount of their electric bill because they believe their bill reflects a high rate of usage inconsistent with others in the building and that the totality of the bill is unreasonably high. In its Answer, PSE&G contends that Petitioners were billed appropriate rates for the correct amount of usage for utility services during the period in question.

On March 11, 2016, an evidentiary hearing was held before ALJ Sanders. ALJ Sanders noted that the Petitioners dispute the accuracy of the usage and charges reflected in their bills for the period July 2014 through January 2016, but the Parties do not disagree as to how much PSE&G has charged Petitioners or the kilowatt-hour usage stated in the bills. The focus of the proceeding was to determine whether PSE&G was billing for an excessive number of kilowatt-hours and whether PSE&G is billing at a higher rate than that allowed through its BPU-approved rate structure or that Petitioners' bills were inaccurate.

Petitioner Jones provided testimony at the hearing. Petitioner testified that he was contesting the electric bills for his apartment located on Warren Street in Jersey City, New Jersey. He testified that his electric bills were unreasonably high and inconsistent with his electric usage in the apartment. He also testified that he requested that PSE&G provide information regarding the electricity usage in other apartments in his building, but PSE&G failed to provide that information.

On cross examination, Petitioner acknowledged that his meter was replaced on January 15, 2015, a test was performed on that meter, and the meter was found to have been working at 100 percent accuracy.

James Walsh testified for Respondent at the hearing. Mr. Walsh testified that he has been working for PSE&G for over thirty-eight years, currently holds the position of senior customer relations consultant, and is familiar with Petitioners' case. He testified that he investigated Petitioners' concerns by reviewing the account statements and speaking with the customer on occasion via email. He also identified and explained exhibit R-1, the Statement of Account, and confirmed that the figures in the Statement of Account represent actual meter readings. Mr. Walsh testified that he compared Petitioners' monthly electricity usage in years 2014 and 2015, and observed that the kilowatt usage in both years appeared consistent. He also explained that PSE&G does not speculate with regard to usage because consumption can vary based upon lifestyle and weather, which is why PSE&G relies upon meter readings. Mr. Walsh further testified that Petitioners' meter was replaced in January 2015. He identified and explained exhibit R-3, a meter test result record indicating Petitioners' old meter was operating at 100.05 percent accuracy. Mr. Walsh testified that the investigation did not reveal a diversion or meter tampering.

On cross examination, Mr. Walsh testified that it is not his practice to compare electricity usage between apartments in the same building to assist in settling customer billing disputes. He testified on redirect that the usage of other units in Petitioners' building is not relevant to the usage of Petitioners' unit because each individual customer could be using utility service differently due to customers' differing lifestyles. He testified that he did compare Petitioners' annual average usage to the annual average usage of 23 other units in Petitioners' building and

found that the other units' usage was in line with Petitioners' usage - some units used more electricity and some units used less.

On re-cross examination of Mr. Walsh, Petitioner produced a utility bill from his 2013 apartment in Kentucky in support of his argument that his PSE&G charges are higher in comparison to other places he has lived and that he is being overbilled for electricity. The Kentucky utility bill was marked as Exhibit P-1. Petitioner questioned Mr. Walsh as to why PSE&G's charge per kilowatt in 2015 is higher than the Kentucky electric company's charge per kilowatt in 2013. In response, PSE&G stipulated that the 2013 Kentucky bills reflect a lower electricity rate than the 2015 New Jersey PSE&G bills.

At the conclusion of the hearing, Exhibits R-1 through R-5 and Exhibit P-1 were moved into evidence.

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, Petitioners bear the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is found to be 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.) cert. denied, 31 N.J. 75 (1959). Thus, Petitioners must establish their contention that the charges to their account are not proper by a preponderance of the credible evidence.

At the hearing, Petitioners raised the argument that their high electricity bills must be a result of diversion or meter tampering. ALJ Sanders found that Petitioners' electric meter was tested and operating within the accuracy levels set by N.J.A.C. 14:3-4.6. Furthermore, Mr. Walsh testified that when Respondents pulled Petitioners' meter in January 2015 that they saw no evidence of diversion. Petitioners provided no evidence to support the diversion or meter tampering theory.

Another of the Petitioners' arguments is that their usage is higher in comparison to other places they have lived, in similar apartments and in areas with similar climates. Mr. Walsh testified that he made an overall comparison of usage and billing in the other twenty-three units of Petitioners' building. While Mr. Walsh didn't give actual usage numbers, he did testify that some units had higher usage and some lower, and in general Petitioners' usage was in line with that of other units.

As to Petitioners' 2013 Kentucky electric bill, ALJ Sanders observed that the 2013 Kentucky electricity charges may or may not be comparable to charges approved by the New Jersey Board of Public Utilities. ALJ Sanders correctly concluded that there is no evidence in record to indicate that PSE&G was billing outside of the rates approved by BPU.

Considering the insufficiency of the proofs discussed above, each individually and taken as a whole, ALJ Sanders concluded that Petitioners have not established by a preponderance of the evidence that: 1) PSE&G is billing for an excessive number of kilowatt-hours; 2) PSE&G is billing at a higher rate than that allowed through its BPU-approved rate structure; or 3) Petitioners' bills are inaccurate.

After review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of ALJ Sanders to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioners failed to bear their burden of proof as there is

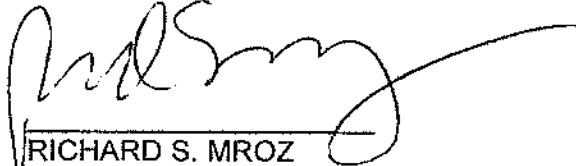
nothing in the record demonstrating that the bills from Respondent for electric consumption at the subject property were inaccurate or improper.

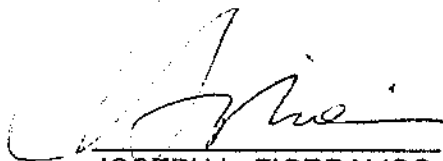
Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

This order shall be effective May 7, 2016.

DATED: 4/27/16

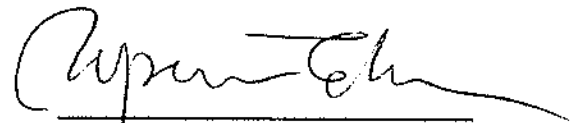
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

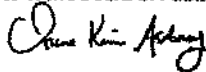

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



BRYAN D. JONES and MEGAN E. PURCELL

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU Docket No. EC15070755U

OAL Docket No. PUC 17951-15

SERVICE LIST

Bryan D. Jones
Megan E. Purcell
187 Warren St., Apt. 204
Jersey City, NJ 07302

Alexander C. Stern, Esq.
PSEG Services Corporation
80 Park Plaza – T5G
Newark, NJ 07102-4194
Alexander.stern@pseg.com

Eric Hartsfield, Director
Julie Ford-Williams, Chief
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor
Post Office Box 350
Trenton, NJ 08625-0350
Eric.Hartsfield@bpu.state.nj.us
Julie.Ford@bpu.state.nj.us

Patricia A. Krogman, DAG
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Patricia.Krogman@dol.lps.state.nj.us

CMS



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED

MAR 14 2016

15070755U

INITIAL DECISION

OAL DKT. NO. PUC 17951-15

AGENCY DKT. NO. EC 15070755U

BRYAN D. JONES AND MEAGAN E. PURCELL,

Petitioners,

v.

**PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,**

Respondent.

Bryan D. Jones and Megan E. Purcell, petitioners, pro se

**Alexander C. Stern, Associate General Regulatory Counsel, for respondent
Public Service Electric & Gas Company (PSEG Services Corporation,
attorneys)**

CMS
V. Haynes
D. Lee
E. Hartsfield
J. Ford
C. Jordan
R. Lambert
B. Agee
J. Gertsma
C. Vachier

Record Closed: March 11, 2016

Decided: March 14, 2016

BEFORE LAURA SANDERS, Acting Director and Chief ALJ:

Bryan D. Jones and Megan E. Purcell dispute the electric bills they received from Public Service Electric and Gas Company (PSE&G) for their residence in Jersey City for the period from July 2014 through January 2016. Their challenge to the bills was filed with the Board of Public Utilities (BPU) on June 27, 2015. The BPU transferred the contested case to the Office of Administrative Law (OAL), which filed it on November 6,

2015, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. A prehearing conference was conducted by Honorable Kimberly Moss on December 7, 2015, and on December 8, 2015, she entered a prehearing order scheduling the hearing for February 8, 2016. The matter was transferred to the undersigned on January 8, 2016. On February 8, 2016, counsel for PSE&G sought an adjournment due to illness, and the adjournment was granted. The matter was heard on March 11, 2016, and the record closed.

Only one petitioner, Bryan D. Jones, appeared at hearing. He explained that petitioners are challenging the level of their electric bill, both on grounds that they believe their bill reflects a high rate of usage inconsistent with others in the building, and that the totality of the bill is unreasonably high. PSE&G contends the billing is appropriate.

FACTUAL DISCUSSION AND FINDINGS

Although the parties dispute the accuracy of the usage and charges, they do not disagree as to how much petitioners have been charged by PSE&G or what kilowatt-hour usage was stated in the bills coming to petitioners from the company. A summary of those bills (R-1) shows the following:

	2014		2015		2016	
Month	Usage	Cost	Usage	Cost	Usage	Cost
July	890	\$170.95				
August	1465	\$275.91				
September	1282	\$239.15				
October	838	\$150.17				
November	793	\$141.62				
December	1103	\$195.86				
January			52	\$197.92		
February			1144	\$202.06		
March			614	\$108.52		
April			1067	\$191.79		
May			861	\$156.58		

June			1066	\$197.82		
July			1323	\$256.93		
August			1214	\$233.69		
September			1324	\$249.72		
October			888	\$154.71		
November			732	\$126.21		
December			826	\$141.76		
January					1213	\$206.50

Petitioner Jones noted that his apartment is not large, and that it is approximately the same size as two prior residences, one also in Jersey City, and one in Kentucky. Nonetheless, his bills are higher than they were in those residences, and he also believes them to be higher than other, similar apartments in the same building. He has high-efficiency gas heat, and all of the units have central air conditioning. He finds illogical the fact that his electric usage stays high in the winter, when it is heating season. He also has a concern that something might be wrong physically, such that another apartment is drawing power that is flowing in through his meter.

James Walsh, senior customer relations consultant, testified on behalf of PSE&G. He said that when the company pulled petitioners' meter in January 2015, its representatives saw no evidence of diversion. He acknowledged that if something is wrong in the internal wiring in the building, the company would not have been able to see that. The meter test showed the meter to be operating at 100.050 accuracy. (R-3.)

Although the company is not free to share one customer's usage with another, Walsh did undertake an overall comparison of usage and billing in the other twenty-three units in the building in anticipation of the hearing. He did not give actual numbers. He said that while some units had higher usage and some lower, in general petitioners' usage was "in line" with that of other units. Walsh also said that after the meter change, the monthly usage pattern did not vary a lot. Understanding that weather or a factor such as a unit being empty for part of a month can cause significant variation in usage, Walsh thought that the pattern was consistent enough to indicate that the billing was

accurate. As an example, he pointed to September, October, and November 2015, compared to the same period in 2014, which ranged from 3 percent to 8 percent apart. He also said that the average for the thirteen month-period between January 15 and 2016 was 1229 kilowatt-hours for petitioners, which did not seem unusual to him.

Petitioner offered a bill from LGE, a utility that provided electric service to him for a similarly sized apartment in Louisville, KY in 2013. (P-1.) Petitioner testified that in his opinion, the weather in Louisville is comparable to that of Jersey City. The meter reading was from the period between February 28, 2013, and March 29, 2013, and the bill due date was April 25, 2013. In that period, Jones was billed for 1228 kilowatt hours, at a total cost of \$115.49. In contrast, his kilowatt-hour usage in March 2015 was 614, and in April 2015, 1067. The associated PSE&G bills were \$108.52 and \$191.79. Jones points out that the unit charge associated with one kilowatt-hour obviously was much higher since he paid nearly the same amount for half as much power in March, and about 30 percent more for 15 percent more usage in April. This points out, Jones argued, that PSE&G is over-billing.

As there is no dispute as to the number of kilowatt-hours that PSE&G has billed to petitioners, or the amount of money petitioners have paid PSE&G as a result of those billings, they are **FOUND** as **FACT**.

PSE&G conceded that its 2015 rates appear to be higher than those of LGE in 2013. As PSE&G pointed out, without detailed study, it is difficult to make an apples-to-apples comparison because the various charges listed on the LGE bill may or may not equate to charges approved by the New Jersey Board of Public Utilities. While I **FIND** that the mathematics of the LGE bill versus the PSE&G bill speak for themselves, I also **FIND** that there is no evidence in the record to indicate that PSE&G was billing outside of the rates approved by the BPU.

LEGAL ANALYSIS AND CONCLUSION

The burden of establishing that the charges tendered to the petitioners are not proper, such that they are owed a refund, rests with the petitioners. They must establish their contention that the billings are not proper by a preponderance of the credible evidence.

Meter tests can be requested by a customer. N.J.A.C. 14-3:4.5 provides

(a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.

(b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9 Meter records.

(c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

(d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.

(e) Upon application by any customer to the Board, a Board inspector shall test the customer's meter. Such test shall be made as soon as practicable after receipt of the application for the test, and Board staff shall notify the customer and the utility as to the time and place of such test.

(f) The Board shall charge a fee of \$5.00 for a meter test, payable at the time application is made for the test. This fee is to be retained by the Board if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, that is, more than two percent, or in the case of water meters, more than

one and one half percent, the utility shall reimburse the customer for the test fee paid.

N.J.A.C. 14:3-4.6 provides for an

(a) 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.

Here, PSE&G did undertake a test of the meter, and the meter was found to be operating within the accuracy levels set by the regulation. Thus, I **CONCLUDE** that there is no evidence that meter itself is unacceptably inaccurate under the regulation.

One of petitioners' arguments is that their usage is too high in comparison to other places they have lived. As it happens, the comparison between Louisville in 2013 and New Jersey in 2015 shows less usage measured in New Jersey. Thus, the bill does not suggest erroneous metering for that period. Although there is no definitive answer in the record as to why petitioners' usage reached 1103 kilowatt hours in December 2014, 1144 in February 2015, and 1213 in January 2016, all of those readings are somewhat below the summer readings when presumably the air conditioning was adding to costs. March, May, October and November 2015 showed approximately 300 to 400 kilowatt-hours per month below either the summer or winter months. Given this pattern, along with the LGE bill—and the fact that the burden is on the petitioners—I **CONCLUDE** that it has not been established by a preponderance of the evidence that PSE&G is billing for an excessive number of kilowatt-hours. I also **CONCLUDE** that it has not been shown that PSE&G is billing at a rate higher than that allowed through its BPU-approved rate structure, or that the bills are inaccurate.

ORDER

For the reasons cited above, I **CONCLUDE** and hereby **ORDER** that the appeal must be **DISMISSED**.

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

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 14, 2016

DATE



LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Received at Agency: _____

Date Mailed to Parties: _____

/caa

LIST OF WITNESSES

For petitioners

Bryan D. Jones

For respondent

James T. Walsh

LIST OF EXHIBITS

For petitioners

P-1 LGE bill to Bryan Jones, due date April 25, 2013

For respondent

- R-1 Summary of PSE&G billings to petitioners and usage calculations between July 1, 2014, and January 12, 2016
- R-2 Letter to Megan E. Purcell from David Pirrong, Customer Representative, BPU, dated May 24, 2013
- R-3 Result of Meter Reading test dated January 28, 2015
- R-4 Copy of petition from Megan E. Purcell to BPU dated July 12, 2013
- R-5 Letter to Megan E. Purcell from Edward Sullivan, Manager, Regulatory Services, PSE&G, dated July 24, 2013