



Agenda Date: 2/28/18
Agenda Item: 7A

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

GEORGE EIKENS,
Petitioner,

v.

JERSEY CENTRAL POWER
AND LIGHT COMPANY,
Respondent

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ORDER ADOPTING
INITIAL DECISION

BPU DOCKET NO. EC16090876U
OAL DOCKET NO. PUC 17128-16

Parties of Record:

George Eikens, petitioner, pro se
Lauren M. Lepkoski, Esq., on behalf of Respondent, Jersey Central Power & Light Company

BY THE BOARD:

The within matter is a billing dispute between George Eikens ("Petitioner") and Jersey Central Power & Light Company ("JCP&L" or "Respondent"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities ("Board") now **ADOPTS** the Initial Decision filed on December 5, 2017 as follows.

PROCEDURAL HISTORY AND BACKGROUND

On September 15, 2016, George Eikens filed a petition with the Board disputing charges for electric service rendered from October 2012 to May 2013 at his former residence, Valley St., Highlands, New Jersey ("the property"). Petitioner alleged that his family was displaced from the property during the aforementioned months, and that JCP&L incorrectly continued billing Petitioner during that time.

Respondent, in its answer dated October 18, 2016, denied the allegations that Petitioner was incorrectly billed. Respondent confirmed that Petitioner previously received electric service at the property under JCP&L Account No. xxxxxxxx117. JCP&L attached monthly service bills for this account and claimed that Petitioner was a customer from September 2, 2011 until April 8,

2013. According to Respondent, Petitioner had an outstanding balance of \$1,700.93 when Account No. xxxxxxxx117 was closed.

Respondent further responded that Petitioner began receiving electric service again on October 23, 2015, at Bay Avenue, Apt. C, Highlands, New Jersey ("Bay property"), under Account No. xxxxxxxx814, and Petitioner's outstanding balance was transferred to the new account on November 2, 2015. JCP&L requested that the relief sought be denied on the basis that Petitioner failed to set forth a claim upon which relief may be granted.

Subsequently, on November 9, 2016, this matter was transmitted to the Office of Administrative Law ("OAL") for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23. This matter was originally assigned to Administrative Law Judge ("ALJ") Edward J. Delanoy, Jr. On September 15, 2017, this matter was reassigned to ALJ Tricia M. Caliguire.

A hearing was scheduled before ALJ Caliguire for September 22, 2017. Petitioner appeared without counsel. Prior to the hearing, JCP&L and Petitioner advised the ALJ that they had reached a Settlement Agreement ("Agreement"). Counsel for JCP&L read the terms of the Agreement into the record. Subsequently, Petitioner was sworn in and questioned under oath by ALJ Caliguire. Petitioner testified that he agreed with the Agreement terms as represented by Respondent, that he was not coerced, and that he was entering into the Agreement voluntarily. Petitioner also indicated on the record that he wanted the ALJ to approve the Agreement. Under the Agreement, Petitioner agreed to make a down payment of \$1,700.00 on or before October 2, 2017 to JCP&L. Thereafter, Petitioner agreed to make monthly installments of \$200.00 over the next twenty-four months for his outstanding balance, plus payment of current consumption charges.

On the record, ALJ Caliguire approved the Agreement and found that: (1) Petitioner understood the terms of the agreement; (2) Petitioner was not suffering from any impairment; and (3) Petitioner was not coerced in any way. ALJ Caliguire further requested that Respondent prepare a written Agreement and a Certificate of Withdrawal.

On September 22, 2017, Respondent sent a settlement letter to Petitioner, which detailed the Agreement terms and instructed Petitioner to execute the Agreement and Certificate of Withdrawal. Under the materials terms of the Agreement, Petitioner agreed not to dispute: 1) the transfer of \$1,700.93 for services rendered at the property; 2) the transfer of \$2,509.66 for services rendered at the Bay property while under the name of Petitioner's minor child; and 3) the transfer of a credit of \$1,779.57 for services rendered at another property. Petitioner also agreed, by October 2, 2017, to make a down payment of \$1,700.00 to his current account which had a current balance of \$7,312.91. Respondent agreed, upon receipt of the down payment, to set up a twenty-four month installment plan of \$200.00 per month plus current monthly charges on the remaining balance.

On or about October 31, 2017, JCP&L filed a motion at the OAL to enforce the Agreement. Respondent represented that pursuant to the instructions from the OAL, JCP&L sent the Agreement and Certificate of Withdrawal to Petitioner on September 22, 2017. According to UPS tracking, the letter was delivered to Petitioner on September 25, 2017. Respondent argued that the OAL should enforce the terms of the Agreement and dismiss the petition as Petitioner failed to execute the Agreement, failed to make the \$1,700.00 down payment by

October 2, 2017, and failed to make a single payment on his current account. Respondent argued that enforcement of the Agreement and dismissal of the petition is appropriate as New Jersey has a strong public policy in favor of settlements.

Respondent further argued that settlements, even ones entered into through an oral offer and acceptance, can constitute a binding contract, and as such, should be enforced absent compelling circumstances to the contrary. JCP&L's motion also identified its efforts to reach Petitioner regarding the Agreement.

No opposition from the Petitioner was received by the OAL. The record was closed on November 10, 2017.

On December 5, 2017, ALJ Caliguire issued an Initial Decision, granting Respondent's motion to enforce the Agreement and dismiss the petition. In considering Respondent's motion, ALJ Caliguire found that the record was undisputed. Specifically, the ALJ found that Petitioner's outstanding balance, as of September 22, 2017, was \$7,312.91. The ALJ further found that both parties voluntarily agreed to the Settlement as evidenced by their sworn testimony of September 22, 2017. Respondent prepared the Agreement and Certificate as requested by the ALJ and delivered both to Petitioner for execution. Unfortunately, Petitioner failed to execute either document and did not make any payments on his utility account. Respondent notified the OAL regarding Petitioner's failure to sign the Agreement or make payments, and requested a new hearing be scheduled. Both Respondent and ALJ Caliguire attempted to contact Petitioner, but their efforts were unsuccessful. As a result, ALJ Caliguire found that Petitioner failed to provide any justification for failing to execute the Agreement and Certificate of Withdrawal as Petitioner failed to respond to JCP&L's motion and failed to contact the OAL with any concerns related to the Agreement. ALJ Caliguire noted that the record is clear that Petitioner, while under oath, understood and voluntarily accepted the Agreement terms. Based on these facts, ALJ Caliguire found that enforcement of the Agreement and dismissal of the petition was appropriate as New Jersey has a strong public policy in favor of settlement agreements, and as Petitioner provided no basis to disturb the agreed upon terms.

No exceptions to ALJ Caliguire's Initial Decision were filed with the Board.

By Order dated December 19, 2017, the Board was given until March 4, 2018, to render a final agency decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

DISCUSSION AND FINDINGS

Petitioner claims that Respondent incorrectly billed his account for electric service from October 2012 to May 2013 at the property as his family was displaced from this property due to Hurricane Sandy. Respondent disagreed. Prior to the evidentiary hearing in this matter, the parties reached an oral Agreement to dispose of all issues in this matter, which was read into the record by Respondent on September 22, 2017. Petitioner was sworn-in and questioned by the ALJ to confirm that he understood the Agreement and that his acceptance of the terms was voluntary. Based on his responses, the ALJ was satisfied that the Agreement was being entered into voluntarily and approved the following essential terms on the record:

1. Petitioner requested a hearing related to a billing dispute for electric service provided at the property;
2. Respondent currently provides electric service to Petitioner at the Bay property;
3. Petitioner would make a down payment to Respondent of \$1,700.00 by October 2, 2017;
4. Petitioner would be placed on a twenty-four month payment arrangement and would make monthly installment payments of \$200.00 for money on his remaining balance; and
5. Respondent would prepare an Agreement setting forth the above terms and a Certificate of Withdrawal, which would be presented to the OAL for review after it is signed by Petitioner.

A settlement agreement between parties to a lawsuit is a contract. Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div.), certif. denied, 94 N.J. 600 (1983). As such, settlement agreements should be enforced like other contracts “absent a demonstration of ‘fraud or other compelling circumstances.’” Id. at 125 (quoting Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974)). Additionally, “[w]here the parties agree upon the essential terms of a settlement, so that the mechanics can be ‘fleshed out’ in writing to be thereafter executed, the settlement will be enforced notwithstanding the fact that the writing does not materialize because a party later reneges. Lahue v. Pio Costa, 263 N.J. Super. 575, 596 (App. Div. 1993), certif. denied 134 N.J. 477 (1993)(citing Bistricher v. Bistricher, 231 N.J. 143, 145 (Ch. Div. 1983)).

After review of the evidential materials in this matter, the Board agrees with ALJ Caliguire that an oral settlement agreement was entered into between Petitioner and Respondent on September 22, 2017. As found in ALJ Caliguire’s Initial Decision, Petitioner clearly testified under oath that he agreed to the terms of the Agreement as placed on the record by Respondent, was not coerced, and was happy that the parties were able to resolve this case. Petitioner also clearly indicated on the record that he wanted the ALJ to approve the Agreement. As an oral Agreement existed between the parties, which resolved all of the essential issues pending at the OAL in this matter, it should not be disturbed absent fraud or other compelling circumstance. Notably, Petitioner did not allege fraud or other compelling circumstance warranting modification of the Agreement. Indeed, Petitioner failed to respond to Respondent’s motion and failed to provide any justification for not executing the Agreement or Certificate of Withdrawal. Accordingly, the Board **FINDS** that the essential terms of a settlement were agreed upon by the parties in this matter. The Board further agrees that the absence of a writing memorializing the terms does not invalidate the September 22, 2017, Agreement between Petitioner and Respondent.

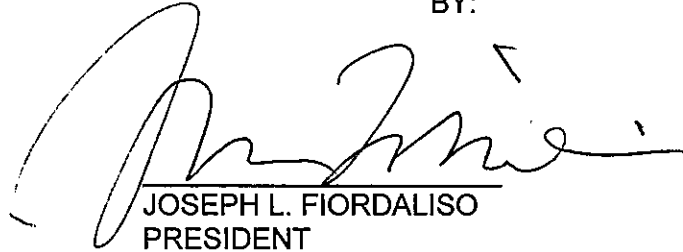
Accordingly, after careful consideration and review of the Initial Decision, and consideration of the entire record, the Board **HEREBY FINDS** that the findings of fact and conclusions of law set out by ALJ Caliguire are reasonable and supported by law, and **ACCEPTS** those findings.

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

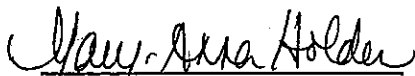
This order shall be effective March 10, 2018.

DATED: 2/28/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



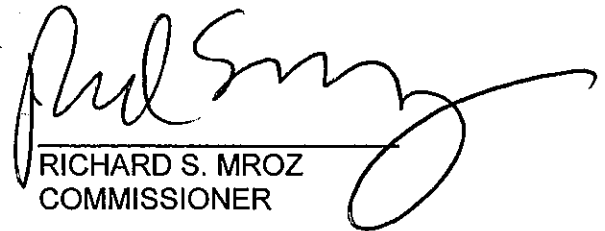
MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

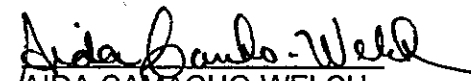


UPENDRA J. CHIVUKULA
COMMISSIONER



RICHARD S. MROZ
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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

GEORGE EIKENS

V.

**JERSEY CENTRAL POWER & LIGHT COMPANY
BPU DOCKET NO. EC16090876U
OAL DOCKET NO. PUC 17128-16**

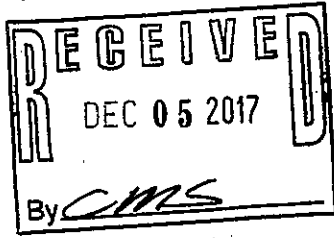
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BOARD OF PUBLIC UTILITIES
MAIL ROOM

**INITIAL DECISION ON MOTION
TO ENFORCE SETTLEMENT**

GEORGE EIKENS,

Petitioner,

v.

**JERSEY CENTRAL POWER & LIGHT
COMPANY,**

Respondent.

OAL DKT. NO. PUC 17128-16

AGENCY DKT. NO. EC16090876U

George Eikens, petitioner, pro se

Lauren M. Lepkoski, Esq., for respondent Jersey Central Power & Light Company

Record Closed: November 10, 2017

Decided: December 4, 2017

BEFORE TRICIA M. CALIGUIRE, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On September 15, 2016, petitioner George Eikens (Elkens) filed a petition (Petition) with the New Jersey Board of Public Utilities (Board) requesting a formal hearing on a billing dispute with respondent Jersey City Power & Light Company (Company). The Board sent a copy of the Petition to respondent on October 4, 2016, and respondent filed its Verified Answer to the Petition on October 18, 2016. This matter was filed with the Office of Administrative Law (OAL) on November 14, 2016, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

CMS
V. Haynes
D. Thomas
E. Hartsfield
J. Ford
R. Lambert
R. Matos
K. Flynn
D. Brantley
C. Vachier

After the first scheduled telephone prehearing conference was adjourned at respondent's request, the Honorable Edward J. Delaney, Jr., ALJ, held a telephone prehearing conference with the parties on January 23, 2017. During this call, petitioner asked that the hearing not be scheduled until he retained counsel. Petitioner failed to appear for a telephone prehearing conference scheduled for March 1, 2017, but contacted Judge Delaney's office five days later on the mistaken presumption that the conference was scheduled for March 6, 2017. Petitioner also advised Judge Delaney's assistant that he was having difficulty retaining counsel.

During a May 15, 2017, telephone prehearing conference, the parties agreed to an August 7, 2017, hearing date. At petitioner's request, and over respondent's objection, the hearing was later rescheduled to September 22, 2017.

On September 15, 2017, the matter was reassigned to the undersigned and, on September 22, 2017, the parties appeared before me for the scheduled hearing. Petitioner appeared without counsel. Prior to commencing the hearing, I held a prehearing settlement conference, as a result of which the parties agreed, on the record, to a settlement of all issues in dispute. N.J.A.C. 1:1-19.1(a)(2).

At approximately 10:30 a.m. on Friday, September 22, 2017, a settlement was placed on the record, including petitioner's agreement to make a down payment toward the outstanding balance of \$7,312.91, on his Company account on or before October 2, 2017. As directed by the tribunal, respondent prepared the settlement agreement and a certificate of withdrawal, and sent the documents to petitioner for execution. Petitioner did not sign or return these documents.

On October 3, 2017, respondent sent a letter to the undersigned stating that petitioner had failed to execute the settlement agreement, had not made the agreed upon down payment, and had contacted the Board to dispute the settlement agreement. No notice of this dispute was filed by petitioner with the OAL. Since October 3, 2017, petitioner has not responded to efforts by my office to reschedule the hearing and there has still been no filing of an executed agreement, and petitioner has made no payments on his Company account.

On October 31, 2017, respondent filed a motion to enforce the settlement agreement and to dismiss the petition. N.J.A.C. 1:1-12.1 et seq. Petitioner made no response to respondent's motion.

FACTS

On September 22, 2017, the parties participated in a settlement conference and reached agreement on the following (the Settlement), which was read into the record by respondent:

1. Petitioner had requested a hearing related to a billing dispute with respondent for electric service provided at petitioner's former residence, 35 Valley Street, Highlands, New Jersey;
2. Respondent currently provides electric service to petitioner at 141 Bay Avenue, Highlands, New Jersey;
3. Petitioner's outstanding account balance, as of September 22, 2017, was \$7,312.91, covering amounts owed for service at 35 Valley Street, at 141 Bay Avenue under the name of petitioner's minor child,¹ and at 141 Bay Avenue under petitioner's name;
4. Petitioner would make a down payment to respondent of \$1,700.00 on or before October 2, 2017;
5. Petitioner would make monthly installment payments of \$200.00 over the next twenty-four months, plus payments of then-current charges; and
6. Respondent would draft an agreement setting forth the above terms and a Certificate of Withdrawal, by which petitioner would withdraw the Petition.

¹ When petitioner moved to the residence at 141 Bay Avenue, he opened an electric account with respondent on May 29, 2013, in the name of his minor child, and kept the child's name on the account through October 22, 2015.

Respondent would deliver both documents to petitioner, who would sign and return both documents to respondent. Respondent would forward the fully-executed settlement agreement to the tribunal for review and a filing with the Board of an Initial Decision on the Settlement.

In response to questions from the tribunal, petitioner made the following statements on the record:

1. Petitioner filed this case against respondent;
2. Petitioner carefully reviewed the terms of the Settlement;
3. Petitioner had no questions regarding the Settlement;
4. Petitioner accepted the terms of the Settlement;
5. Petitioner voluntarily agreed to the terms of the Settlement;
6. No person made any promises to petitioner regarding any matters outside the terms of the Settlement in an attempt to induce him to enter into the Settlement;
7. Petitioner was not coerced nor threatened in any way to enter into the Settlement;
8. On the day of the scheduled hearing and settlement conference, petitioner was not taking any form of medication or other substance that might impair his ability to consider and/or accept the Settlement; and
9. Petitioner asked the tribunal to approve the Settlement.

Respondent prepared a Settlement Agreement and a Certificate of Withdrawal, and delivered both to petitioner on September 25, 2017. Petitioner did not sign or return either document to respondent, nor has petitioner made payments on his utility account.²

On October 3, 2017, respondent notified the tribunal that petitioner had failed to execute the Settlement Agreement and requested that a new hearing date be scheduled. Both respondent and my office attempted to reach agreement with petitioner as to a new hearing date. In the last email exchange with petitioner, he was advised to notify my office of his availability by October 25, 2017. He did not respond to this request. As stated above, the Company filed the present motion to enforce the oral settlement on October 31, 2017.

Insofar as petitioner failed to respond to the motion, as well as on the basis of the oral record, the preceding statements are accepted and not disputed. Accordingly, I **FIND** the preceding as **FACTS**. Further, I **FIND** that both parties voluntarily agreed to the Settlement as evidenced by their sworn testimony.

In its motion to enforce the settlement, respondent notes that petitioner contacted the Board at some time prior to October 2, 2017, regarding concerns with the settlement, and that, on October 2, 2017, petitioner notified respondent that he "believed there may be discrepancies" in the Settlement Agreement. Respondent states that petitioner has yet to identify any such discrepancies. Since petitioner has not responded to this motion nor has contacted my office (by mail, email or telephone) regarding his concerns with the settlement and/or the Settlement Agreement, I **FIND** that petitioner has failed to provide any justification for his failure to execute the Settlement Agreement and Certificate of Withdrawal.

LEGAL ANALYSIS AND CONCLUSION

It is a well-established principle of the law that "settlement of litigation ranks high in [the] public policy" of New Jersey. Pascarella v. Bruck, 190 N.J. Super., 118, 125 (App.

² In an October 21, 2017, email to my office, petitioner stated that he had made "good faith" payments to the Company, but the Company continues to assert that no payments have been made.

Div.), certif. denied, 94 N.J. 600 (1983). See also, Department of the Pub. Advocate v. Board of Pub. Util., 206 N.J. Super. 523, 528 (App. Div.1985).

Where the parties agree upon the essential terms of a settlement, so that the mechanics can be "fleshed out" in a writing to be thereafter executed, the settlement will be enforced notwithstanding the fact the writing does not materialize because a party later reneges.

[Bistricer v. Bistricer, 231 N.J. Super. 143, 145 (Ch. Div. 1983)].

Respondent argues that, in the absence of compelling circumstances, second-guessing or remorse on petitioner's part should not be sufficient to negate the terms of the settlement to which he voluntarily agreed. "Absent a showing of fraud or other compelling circumstances, an agreement to settle a lawsuit is a contract[.]" Id. at 147.

Over the course of the year since petitioner filed the Petition, he has repeatedly stated that he has "proof" that the Company's records are not correct. But, when provided the opportunity to make his case at the September 22, 2017 hearing, he voluntarily gave up the chance to do so. In contrast, starting with its answer to the Petition, respondent has presented documents allegedly showing the amounts billed to petitioner by the Company for electricity delivered to both his residences on accounts in the name of petitioner and of his minor son.

Further, respondent alleges that petitioner is not acting in good faith. He had ample opportunity to ask questions of both respondent and the undersigned, about the Company's billing records and about the terms of the settlement, on September 22, 2017, or later, as both respondent and my office made multiple phone calls to him in the month following the settlement. Petitioner failed to raise any objections to the settlement until the date for making the down payment had arrived and he has yet to respond, by any means, to the present motion.

I concur with respondents' argument and will grant the motion to enforce the settlement. As found above, and as the transcript of the record makes clear, petitioner understood and voluntarily accepted the settlement terms placed on the record before me

on September 22, 2017. All that remained was to reduce the terms to a writing, and to draft and execute a certificate of withdrawal of the underlying Petition.

ORDER

Respondent's motion to enforce the settlement reached between the parties on the record on September 22, 2017, the terms of which are set forth above, is **GRANTED** and petitioner's Petition is hereby **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.

December 4, 2017

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

nd