



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

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

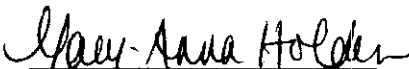
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

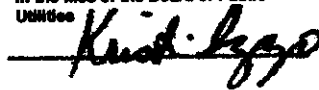

NICHOLAS ASSELTA
COMMISSIONER


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

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

REG MAILROOM

DEC 22 2011

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INITIAL DECISION

OAL DKT. NO. PUC 01958-11

AGENCY DKT. NO. EC10120885U

RECEIVED
CASE MANAGEMENT
2011 DEC 22 AM 10:04
BOARD OF PUBLIC UTILITIES
NEWARK, 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); Shehi 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

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.

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