



Agenda Date: 12/19/12  
Agenda Item: 7D

**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

DENNIS MCKENZIE,  
Petitioner

v.

PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,  
Respondent

) ORDER ADOPTING INITIAL  
) DECISION  
)  
)  
)  
)  
)  
)

) BPU DOCKET NO. EC11070420U  
) OAL DOCKET NO. PUC 00397-12  
)

Parties of Record:

**Dennis McKenzie**, Petitioner pro se  
**Sheree L. Kelly, Esq.**, Respondent, PSEG Services Corporation

**BY THE BOARD:**

By petition filed with the Board of Public Utilities ("Board") on July 12, 2011, Dennis McKenzie ("Petitioner"), a gas and electric customer, requested a formal hearing alleging improper processing of payments and credits by Public Service Electric and Gas ("PSE&G" or "Respondent") for service. On September 12, 2011, PSE&G filed a general answer. On January 6, 2012, the Board transmitted the matter to the Office of Administrative Law ("OAL") for 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 -13.

The petition alleges that PSE&G did not properly credit amounts in accordance with a May 8, 2008 settlement (the "2008 Settlement"), and that PSE&G disallowed continuing payments on a subsequent payment arrangement. On May 8, 2008, McKenzie and PSE&G reached a settlement (the "Settlement"). The Settlement terms included: (1) PSEG shall credit Petitioner's account in the amount of \$1,172.21; (2) PSEG shall obtain an actual gas meter reading for petitioner's utility account on May 12, 2008, provided petitioner provides access to his property; and (3) if petitioner abides by all terms and conditions of the Universal Service Fund (USF)

assistance program the arrearage balance of \$12,091.94 shall be eliminated from his account.<sup>1</sup> Mr. McKenzie challenged whether each term of the 2008 Settlement had been met.

On September 24, 2012, Administrative Law Judge Kimberly A. Moss ("ALJ") held an evidentiary hearing in which Petitioner testified on his own behalf, and both Claire Bartolomeo, Outreach Program Coordinator, and Edward Sullivan, Regulatory Services Manager, testified on behalf of PSE&G. ALJ Moss submitted the Initial Decision to the Board on October 3, 2012. No exceptions were filed by any party.

On whether \$1,172.21 was credited to the account, Petitioner testified that he had not received the credit. Mr. Sullivan testified that the \$1,172.21 credit was applied to the account on May 21, 2008. The statement of account, Exhibit R-2, reflects the utility posted the \$1,172.21 credit on May 21, 2008. The ALJ subsumed this finding in deciding the 2008 Settlement.

On whether the actual gas meter had been read, Petitioner testified that the meter reader had read the electric meter and charged it as if it was the gas meter to affect his account billings. By Initial Decision, ALJ Moss found the actual gas reading occurred on May 14, 2008, that the gas meter was changed on January 28, 2011, and that the new gas meter was tested on August 26, 2011 to be running at 100.96 percent thus the meter was accurate, not registering fast by more than two percent and no adjustment of charges was required consistent with N.J.A.C. 14:3-4.6(a).

On whether USF credits were made in the amount of \$12,091.94 to the account, Petitioner testified that he had not received the USF credit of \$12,091.94 as of June, 2009. Mr. Sullivan testified the USF Fresh Start forgiveness program began on June 12, 2008 and a final credit was posted on July 10, 2009. Ms. Bartolomeo testified the \$12,091.94 in arrears would be forgiven upon successful completion of a one-year USF Fresh Start program requiring timely monthly payments. Ms. Bartolomeo also testified that the utility posted USF credits to the account: on June 12, 2008 for \$400; on August 12, 2008 for \$400; on September 11, 2008 for \$200; on October 10, 2008 for \$200; on November 10, 2008 for \$200; on December 11, 2008 for \$200; on February 4, 2009 for \$200; on June 9, 2009 for \$9891.94; and on July 10, 2009 for \$400, which was really for April 2009. Mr. Sullivan testified to sending an August 17, 2009 letter to Petitioner listing the utility's USF credited amounts to the account, totaling \$12,091.94.<sup>2</sup> The ALJ thus concluded, on all terms of the 2008 Settlement, that Petitioner had failed to prove by a preponderance of evidence that the account was not properly credited.

The statement of account further shows that PSE&G established a twelve-month installment plan for petitioner on November 11, 2010. A notation on the summary of account reflects there was a \$1,545.04 check received on February 4, 2011. Petitioner acknowledges the check was later canceled, but argues it should not have terminated the agreement. Mr. Sullivan testified that the installment plan was cancelled because the payment arrangements were not kept. By Initial Decision, ALJ Moss found that on February 14, 2011, Petitioner's check in the amount of \$1,545.04 was returned by the bank, thus Petitioner was non-compliant with payment terms and

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<sup>1</sup> N.J.S.A. 48:3-60(b) established the Universal Service Fund ("USF") as a non-lapsing fund for Board financial assistance, administered by the New Jersey Department of Community Affairs, to provide energy assistance benefits to income-eligible utility customers. The USF Fresh Start program, a component of the USF, allows first-time USF participants with arrearages to earn credits on their account in exchange for timely monthly bill repayment.

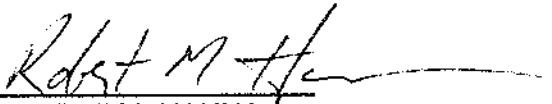
<sup>2</sup> The Board notes that the statement of account reflects USF credits of \$200 on April 2, 2009, \$200 on April 15, 2009, and \$400 on July 10, 2009. When these amounts are added to the other USF credits, it appears that Petitioner received a total USF credit of \$12,491.94.

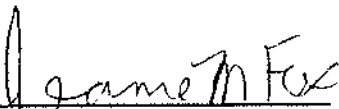
the agreement terminated. The ALJ further found Petitioner's account had a present balance of \$8,766.80.

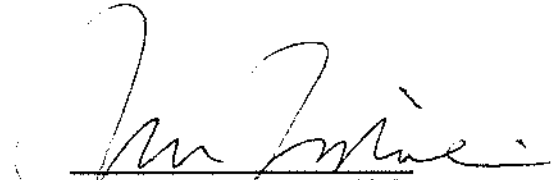
Upon careful review and consideration of the record, the Board **HEREBY FINDS** that the factual determinations and legal conclusions of the ALJ are reasonable and based upon sufficient, competent, and credible evidence. The Board **HEREBY ADOPTS** the Initial Decision in its entirety modifying only the ALJ's calculation of the total USF Fresh Start credit amount posted to the account, from \$12,091.94 to \$12,491.94.


DATED: 12/19/12

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



Dennis McKenzie v. Public Service Electric and Gas Company  
DOCKET NO. EC11100420U

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Newark, NJ 07102

*filed*  
*10/9/12*

REC'D

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NJ BPU  
CASE MANAGEMENT



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

RECEIVED

2012 OCT 5 PM 12 33

NJ BPU  
MAILROOM

**INITIAL DECISION**

OAL DKT. NO. PUC 00397-12

AGENCY DKT. NO. ~~EC1100420U~~

*EC11070420U*

**DENNIS MCKENZIE,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,**

Respondent.

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**Dennis McKenzie, pro se**

**Sheree Kelly, Esq.,** appearing on behalf of respondent

Record Closed: September 24, 2012

October 3, 2012

BEFORE **KIMBERLY A. MOSS, ALJ**

**STATEMENT OF THE CASE**

**HISTORY**

Petitioner Dennis McKenzie (McKenzie or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Public Service Electric and Gas (PSE&G) for gas and electrical service provided to 944 Kensington Avenue, Plainfield, New Jersey.

On January 9, 2012, this matter was transmitted to the Office of Administrative Law (OAL) for 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-13. A telephone prehearing was conducted on February 15, 2012, at which time a hearing was scheduled for May 14, 2012. Respondent requested an adjournment of the hearing date, which was granted. The hearing was rescheduled for July 23, 2012. Respondent again requested an adjournment, which was granted. The hearing was held on September 24, 2012, at which time the record closed.

### **FACTUAL DISCUSSION AND FINDINGS**

Having had an opportunity to hear the testimony, observed the witnesses, and reviewed the exhibits, I **FIND** the following **FACTS**:

McKenzie is a gas and electric customer of PSE&G. On May 8, 2008, McKenzie and PSE&G reached a settlement. The terms of the settlement were:

1. PSEG shall credit petitioner's account in the amount of \$1,172.21.
2. PSEG shall obtain an actual gas meter reading for petitioner's utility account on May 12, 2008, provided petitioner provides access to his property.
3. If petitioner abides by all terms abides by all terms and conditions of the USF assistance program the arrearage balance of \$12,091.94 shall be eliminated from his account.

USF is a low-income program. The Fresh Start Program, a component of USF, is a one-time program for people whose utility bill is more than sixty dollars in arrears. If the Fresh Start Program is successfully completed, the arrears are forgiven. Credits are earned toward the forgiveness of the arrears with payment of the bill. McKenzie successfully completed the Fresh Start Program. He received the following credits from the Fresh Start Program:

June 12, 2008	\$400
August 12, 2008	\$400
September 11, 2008	\$200
October 10, 2008	\$200
November 10, 2008	\$200
December 11, 2008	\$200
February 4, 2009	\$200
June 9, 2009	\$9891.94
July 10, 2009 for April 2009	\$400

McKenzie received a total credit of \$12,091.94.

PSE&G conducted an actual gas reading on May 14, 2008. McKenzie's gas meter was changed on January 28, 2011. It was tested on August 26, 2011. The meter was running at 100.96 percent.

The statement of account shows that a twelve-month installment plan was created for petitioner by PSE&G on November 11, 2010. On February 14, 2011, McKenzie sent PSE&G a check in the amount of \$1545.04. That check was returned by the bank, which caused any installment plan that was in effect at that time to end.

Petitioner's account presently has an outstanding balance of \$8,766.80.

### LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:3-4.6(a) states:

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.

In this case the meter was registering at 100.96.

It was not registering fast by more than two percent; therefore there is no need for an adjustment. I **CONCLUDE** that the meter was accurate.

Petitioner had a twelve-month installment plan with PSE&G. I **CONCLUDE** that petitioner did not comply with the terms of the installment plan because he attempted to make a payment with a check that the bank returned.

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

In this matter petitioner stated that PSE&G did not properly credit his account in accordance with the May 8, 2008, agreement. PSE&G provided evidence that it did properly credit petitioner's account. I **CONCLUDE** that petitioner did not prove by a preponderance of the evidence that PSE&G did not properly credit his account in accordance with the May 8, 2008, settlement agreement.

#### ORDER

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

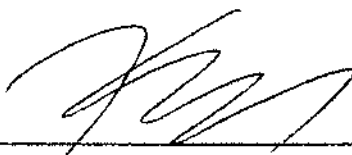
I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.



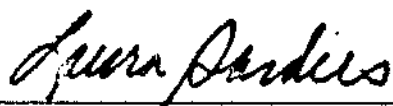
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is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

10-3-12  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: **OCT - 4 2012**  
ljb

**WITNESSES**

For Petitioner:

None

For Respondent:

Edward Sullivan  
Clair Bartolomeo

**EXHIBITS**

For Petitioner:

- P-1 Dennis McKenzie's PSE&G bill for June 2009
- P-2 Letter to Dennis McKenzie from PSE&G dated June 10, 2009

For Respondent:

- R-1 Settlement Agreement dated May 8, 2008
- R-2 Statement of Account of Dennis McKenzie
- R-3 Gas Meter Test
- R-4 Letter to Dennis McKenzie from PSE&G dated August 17, 2009