

While the contested case was pending, Respondent filed a Motion for Summary Decision ("Motion") on or about August 30, 2019. In its Motion, Respondent sought to dismiss the petition, contending that Petitioner failed to state a claim upon which relief could be granted. In particular, Respondent argued that Petitioner failed to provide any invoices or documentation evidencing "about \$6,000" in improper charges between 2006 and 2010. Furthermore, Respondent highlighted Petitioner's acknowledgement that her meter was functioning properly. Although Petitioner alleged that the charges on her electricity bill "still came down" after 2010 despite having "added more electronic equipment," Respondent stated that Petitioner provided no evidence to support her claim. Respondent further argued that even if Petitioner were able to show that she was overcharged between 2006 and 2010, Section 3.06 of JCP&L's Tariff barred Petitioner's untimely billing adjustment claims. In support of its Motion, Respondent attached the Affidavit of Charles J. Howlett, FirstEnergy Service Company's Senior Customer Services Compliance Specialist, Petitioner's responses to JCP&L's interrogatories dated August 5, 2019, and Petitioner's August 29, 2019 electricity bill, which referred to an outstanding balance of \$7,234.58. Accordingly, Respondent sought dismissal of the petition with prejudice.

Petitioner submitted a brief response to the Motion on October 18, 2019. According to Petitioner, her "electric bill [amounted to] 1,100.00, 1,500, 1,600" in 2006, and "after [a] couple of years," her electricity bill amounted to "500-600 per month." No additional documentation was attached to the response. On October 22, 2019, Respondent filed a reply in support of its Motion and repeated the arguments that it originally made on August 30, 2019. Because Petitioner did not provide any documentation in support of her claim for relief, Respondent requested that ALJ Olgiati grant its Motion and dismiss the petition with prejudice.

The record was closed on October 22, 2019. On November 1, 2019, ALJ Olgiati issued an Initial Decision, which granted Respondent's Motion for Summary Decision, and dismissed the petition. In the Initial Decision, ALJ Olgiati made specific findings of fact based upon her review of both parties' submissions and billing records. ALJ Olgiati found that:

1. JCP&L provided electric service to Petitioner's Property under Account No. XXXXXXXXX679;
2. As of August 29, 2019, the outstanding balance on Petitioner's account was \$7,234.58;
3. The billing period in dispute is "between 2006-2010";
4. On or about April 8, 2011, JCP&L tested the accuracy of Petitioner's G28601067 meter, which captured Petitioner's usage of electricity, and learned that the meter's average accuracy was 100.04%;
5. Petitioner produced no documentation in her petition or responses to JCP&L's interrogatories to support her claim that she was improperly charged with approximately \$6,000 between 2006 and 2010;
6. Petitioner produced no documentation in her responses to JCP&L's interrogatories to support her claim that her electricity bill "still came down" after 2010, even though she purportedly "added[] more electronic equipment[]"; and
7. JCP&L "no longer maintains" Petitioner's billing records from 2006 to 2010. (ID at 2-3).

In ALJ Olgiati's legal analysis, the ALJ reviewed N.J.A.C. 1:1-12.5(b), stating that "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law," the motion for summary decision may be granted. (ID at 4). ALJ Olgiati further noted that both a public utility and its customers are required to operate or act in accordance with the public utility's Board-approved tariff and that the tariff binds all customers.

N.J.A.C. 14:3-1.3(a); Application of Saddle River, 71 N.J. 14, 29 (1976); (ID at 4). According to Section 3.06 of JCP&L's Tariff for Service, JCP&L may not adjust a customer's billing charges if the adjustment would "be for a period of more than six years prior to the time the reason for the adjustment became known to [JCP&L]." (ID at 5). Furthermore, ALJ Olgiati cited to N.J.A.C. 14:3-6.1(b), which requires each utility to "keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years." (ID at 5).

Analyzing both parties' submissions, ALJ Olgiati found that Petitioner "failed to provide any competent evidence demonstrating a genuine issue of material fact which precludes summary decision." (ID at 6). Namely, ALJ Olgiati reasoned that Petitioner "provided no documentary or other competent evidence supporting her blanket assertions that her billing far exceeded amounts owed." (ID at 5). Additionally, ALJ Olgiati explained that pursuant to N.J.A.C. 14:3-6.1(b), JCP&L was not required to maintain Petitioner's billing records, the date of which "exceed[ed] the mandated six-year retention period." (ID at 6). ALJ Olgiati found that Petitioner failed to provide any information about her electronic equipment that was installed after 2010. (ID at 6). Even if Respondent were found to have improperly charged Petitioner, ALJ Olgiati concluded that Section 3.06 of JCP&L's Tariff for Service barred Petitioner's untimely billing adjustment claims. (ID at 5). Thus, the ALJ dismissed the petition and granted JCP&L's Motion for Summary Decision. (ID at 6).

The Board did not receive exceptions to ALJ Olgiati's Initial Decision.

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The burden of proof is met if the evidence 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). A motion for summary decision may be made upon all or any of the substantive issues in a contested case. N.J.A.C. 1:1-12.5(a). Summary decision may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). Determining whether a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

The present record reflects that there is no genuine issue of material fact regarding the billing amounts due between 2006 and 2010. Namely, Petitioner failed to provide any competent documentary evidence or records of improper billing in her petition, responses to interrogatories, and response to Respondent's Motion for Summary Decision. In addition, Petitioner acknowledged that Meter G28601067 was functioning properly. Finally, because at least nine years have elapsed since the billing period in dispute, Petitioner is time-barred from seeking an adjustment of charges under Section 3.06 of JCP&L's Board-approved Tariff.

Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Olgiati to be reasonable and, accordingly, **HEREBY**

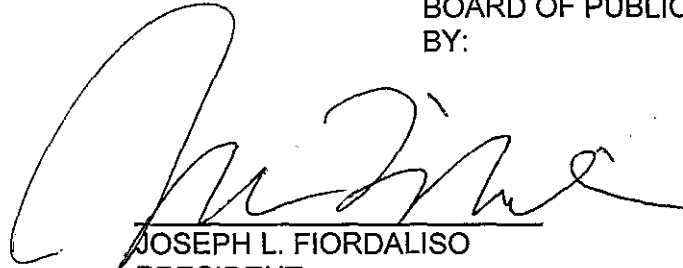
ACCEPTS them. Specifically, the Board **FINDS** the ALJ grant of summary decision to be reasonable and supported by sufficient, competent, and credible evidence.

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


This order shall be effective December 30, 2019.

DATED: 12/20/19

BOARD OF PUBLIC UTILITIES
BY:



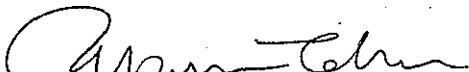
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



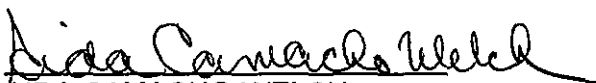
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
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.

SARABJIT KAUR, PETITIONER

v.

JERSEY CENTRAL POWER AND LIGHT COMPANY, RESPONDENT

**BPU DOCKET NO. EC19030414U
OAL DOCKET NO. PUC 07328-19**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING
MOTION FOR SUMMARY DECISION

OAL DKT. NO. PUC 07328-19

AGENCY DKT. NO. EC19030414U

SARABJIT KAUR,

Petitioner,

v.

JERSEY CENTRAL POWER AND LIGHT

COMPANY,

Respondent.

Sarabjit Kaur, petitioner, pro se

Joshua R. Eckert, Esq., for respondent, Jersey Central Power and Light
Company

Record Closed: October 22, 2019

Decided: November 01, 2019

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

This matter concerns an electric service billing dispute. Petitioner, Sarabjit Kaur, alleges that between 2006 and 2010, she received monthly billing statements at her commercial property with balances far exceeding the amounts she was responsible to

pay. Respondent, Jersey Central Power & Light (JCP&L) contends that petitioner is unable to demonstrate any overcharges and that any relief sought by petitioner is barred by its tariff regarding billing adjustments.

PROCEDURAL HISTORY

On or about March 25, 2019, Kaur filed a petition with the Board of Public Utilities. Thereafter, respondent filed a Verified Answer in response. On May 30, 2019, the matter was transmitted to the Office of Administrative Law, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13. On August 30, 2019, respondent filed a Motion for Summary Decision. In support of the motion, JCP&L provided a brief, affidavit of Charles J. Howlett, (Customer Services Compliance Specialist) and supporting exhibits. Petitioner was advised of the due date for her response to the motion and given several extensions on same. Several teleconferences were held and emails were sent from the Office of Administrative Law in an attempt to explain to petitioner that if she wished to oppose the motion for summary decision she needed to provide reasons for same and/or produce documentation evidencing her claims. On October 18, 2019, petitioner submitted a letter in opposition to JCP&L's motion. Thereafter, on October 22, 2019, respondent filed a letter brief in reply and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The following is not disputed therefore I **FIND** as fact:

Petitioner is a current JCP&L customer with an account for commercial electric service at XXXX Route 88, Brick, New Jersey 08724 (the "property"). JCP&L provides service to the property under account No. XXXX7679 (the "account"), which was first established on August 26, 2005.

The current outstanding balance on the account is \$7,234.58. The total balance on the account as of December 27, 2010, was \$5,009.35.

Meter G28601067 was the electric service meter registering usage at the property. It was upon this meter that JCP&L based its billing for the time period including August 26, 2005, through April 8, 2011.

On or about April 8, 2011, JCP&L tested Meter G28601067 to determine its accuracy. The meter tested at an average accuracy of 100.04%. The results of the testing for Meter G28601067 was provided to petitioner in April 2011.

Beginning on January 10, 2018, and through April 8, 2019, JCP&L issued ten disconnection notices due to outstanding unpaid balances on the account.

In her March 25, 2019, petition filed with the Board of Public Utilities, petitioner alleged that "between 2006-2010, I received month-to month billing statements with balances far exceeding amounts I felt I was responsible to pay." As a result, petitioner requested that "my case be reviewed by the Board of Public Utilities."

In her answers to interrogatories, petitioner responded that she believed her billing was incorrect because "between 2006-2010 charges dropped more than half." See answer to Interrogatory No. 7, at Exhibit A-1. Petitioner acknowledged that the electric service meter on the property was working properly. Id. at answer to Interrogatory No. 12. Petitioner disputes approximately \$6,000 of the total amount charged. Id. at answer to Interrogatory No. 14. Further, in response to the Request for Production of Documents, petitioner responded that "I added more electric equipment after 2010, but bill came down. That's major reason I am questioning JCPNL [sic]." Id. at answer to Request for Production of Documents No. 1.

Petitioner produced no documentation in support of her petition or in response to the interrogatories and request for the production of documents served in this case. JCP&L no longer maintains the billing records which petitioner now disputes.

LEGAL ANALYSIS AND CONCLUSION OF LAW

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial’.

Id. at 540.

N.J.A.C. 14:3-1.3(a) provides that “each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the [BPU] for approval[.]” The tariff shall “clearly describe . . . all terms and conditions regarding the services[.]” N.J.A.C. 14:3-1.3(b)2. A utility is expected to operate in accordance with its tariff, N.J.A.C. 14:3-1.3(d), though any inconsistency between a tariff and the governing regulations is resolved in favor of the regulation, unless the tariff “provides for more favorable treatment of customers.” N.J.A.C. 14:3-1.3(i). In other words, a tariff is essentially the law governing the relationship between a public utility and its customers, and is binding upon those parties. Application of Saddle River, 71 N.J. 14, 23 (1976).

Section 3.06 of JCP&L’s tariff provides:

Billing Adjustments: An adjustment of charges due to the Company for Services provided by the Company will be made when a meter fails to register within the limits of accuracy prescribed by the BPU in accordance with NJAC 14:3-4.6, or for any other legitimate reason, in which case such adjustment shall not be for a period of more than six years prior to the time the reason for the adjustment became known to the Company. [Emphasis added.]

Pursuant to N.J.A.C. 14:3-6.1(b) each utility company shall keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years.

In support of its motion for summary decision, JCP&L argues that petitioner has failed to provide any evidence or credible basis for her claims that her billing during 2006-2010 was incorrect. JCP&L argues that the undisputed facts support that the electric service meter for petitioner's property was accurate. It further argues that even if petitioner were able to demonstrate any overcharges, she is not entitled to relief as the disputed charges fall well beyond the period for which its tariff permits a billing adjustment. Finally, JCP&L argues that petitioner only filed her petition after she accrued a large outstanding balance on her account and was issued multiple disconnection notices and that she is using this appeal to avoid paying the charges owed.

In opposition to the motion for summary decision, petitioner argues (1) "my store is 900 SF [square feet]. I had few equipments [sic] the time I bought it in 2006. My electric bill came 1,100.00, 1,500, 1,600 at that time;" (2) "Finally bill went down after couple of years my bill started coming 500-600 per month;" and (3) "unfortunately I could not find my old records yet."

Here, petitioner does not dispute the accuracy of the electric service meter on her commercial property account. She provided no documentary or other competent evidence supporting her blanket assertions that her billing far exceeded amounts owed. She does not take issue with any specific bill or charge during the 2006-2010 time frame, rather petitioner simply states, without any explanation for same, that she

disputes approximately \$6,000 of the amount owed. While this amount is lower than the current \$7,234 outstanding balance on the account, it exceeds the \$5,000 balance owing on the account as of December 27, 2010--the end of the disputed time period. JCP&L no longer maintains the billing records which petitioner disputes as the date of these records exceeds the mandated six-year retention period.

To the extent that petitioner contends that overcharges are demonstrated by decreased billing following the purchase of new/additional equipment, she failed to produce any documentation or detail regarding the numbers, type, or nature of the equipment which she had and that which she replaced or added during the disputed time period.

Thus, having reviewed the parties' submissions in support of, and opposition to, the motion for summary decision, I **CONCLUDE** that petitioner has failed to provide any competent evidence demonstrating a genuine issue of material fact which precludes summary decision. I further **CONCLUDE** that any relief sought by petitioner is barred by respondent's tariff as the disputed billing falls well beyond the six-year period in which billing adjustments, if any, may be made. Accordingly, I **CONCLUDE** that this matter is ripe for summary decision and respondent is entitled to same as a matter of law.

ORDER

I hereby **ORDER** that respondent's motion for summary decision is **GRANTED**, and petitioner's appeal is hereby **DISMISSED**.

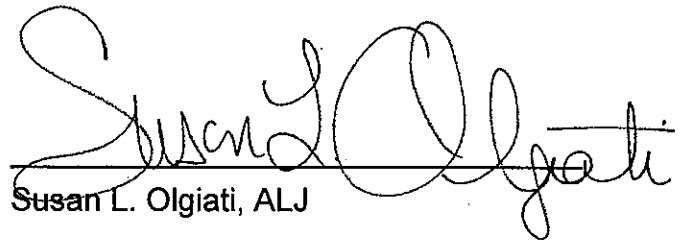
I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

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.

November 01, 2019
DATE


Susan L. Olgiati, ALJ

Date Received at Agency: November 1, 2019

Date Mailed to Parties: November 1, 2019

/s/

APPENDIX
Documents relied upon

For respondent:

Brief in support of Motion for Summary Decision, August 30, 2019, affidavit of Charles Howlett, and supporting exhibits: A-1 through D.

Reply brief in support of Motion for Summary Decision, October 22, 2019.

For petitioner:

Petition filed with the Board of Public Utilities, March 25, 2019.

Letter in opposition to the Motion for Summary Decision, October 18, 2019.