



Agenda Date: 1/18/12
Agenda Item: VIIC

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

ERNESTINE WESTBROOKS,
Petitioner

)
)
)

ORDER OF EXTENSION

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,
Respondent

)
)

BPU DOCKET NO. EC09060443U
OAL DOCKET NO. PUC06361-09

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on October 24, 2011. By previous Order(s) of Extension, the period for issuing a Final Decision was extended to January 23, 2012. Prior to that date, the Board requests a 45-day time extension for issuing the Final Decision in order to conduct a full review of the record.

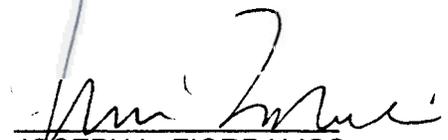
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until March 8, 2012.

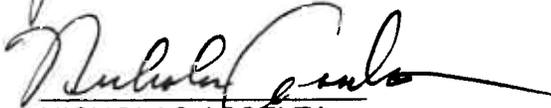
DATED: 1/18/12

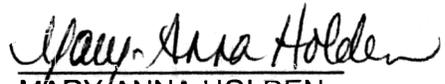
BOARD OF PUBLIC UTILITIES
BY

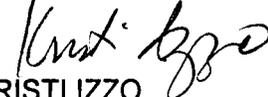

ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY ANNA HOLDEN
COMMISSIONER

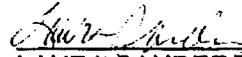
ATTEST: 
KRISTI IZZO
SECRETARY

Date Board mailed Order to OAL: 1/19/12

cc: Service List Attached

DATED:

1/19/12



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL^o mailed executed Order to Board: 1/19/12

Date Board mailed executed Order to Parties: 1/23/12

ERNESTINE WESTBROOKS

V.

JERSEY CENTRAL POWER & LIGHT COMPANY

BPU DOCKET NO. EC09060443U
OAL DOCKET NO. PUC06361-09

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Lambert
Ford-Williams
Reynis



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

OCT 24 2011

RECEIVED

INITIAL DECISION

OAL DKT. NO. PUC 06361-09

AGENCY DKT. NO. EC09060443U

ERNESTINE WESTBROOKS,

Petitioner,

v.

JERSEY CENTRAL POWER & LIGHT COMPANY,

Respondent.

Ernestine Westbrooks, petitioner, pro se

Michael J. Connelly, Esq., for respondent, Jersey Central Power & Light Company

(Morgan Lewis & Bockius, LLP, attorneys)

Record Closed: July 27, 2011

Decided: October 24, 2011

BEFORE ELIA A. PELIOS, ALJ:

STATEMENT OF THE CASE

Ernestine Westbrooks ("petitioner") contends she was improperly deemed by Jersey Central Power & Light ("JCPL" or "respondent") to be responsible for the payment of an account for electric service in the name of a relative. She claims her service was improperly terminated for non-payment and seeks to have service restored to her home.

PROCEDURAL HISTORY

Petitioner filed a Petition with the Board of Public Utilities on May 19, 2009. JCPL filed an Answer to the Petition, which was received by the Board on July 17, 2009.

The Board transmitted the matter for a formal hearing to the Office of Administrative Law, where it was filed on August 18, 2009. A hearing was scheduled to be held on May 18, 2010. The proceedings were begun on that date, but were aborted prior to the first witness presenting any testimony due to petitioner's apparent confusion as to whether she was allowed to have witnesses present to speak on her behalf.

The proceedings were adjourned that petitioner could gather witnesses and perhaps consult counsel. After a number of conference calls between the parties and a period of time where the matter appeared likely to settle, the matter resumed and a hearing was held on May 4, 2011. At the conclusion of respondent's case, the proceedings were again adjourned to accommodate petitioner's request to provide witnesses. The matter continued on July 27, 2011, with no witnesses presented by petitioner other than herself. The matter was concluded and the record closed on that date.

FINDINGS OF FACT

At hearing, Petitioner offered no exhibits into evidence and called no other witnesses but herself. Her testimony was limited to a brief statement that her mother, Louise Kearney, had a house, and her daughter, Dolores Scott, owned a house. Petitioner did not own a house, had a boyfriend and stayed "wherever I wanted to." Petitioner used her daughter's address for receiving a medical benefit and lived with her daughter on and off. She believes she should not be responsible for her daughter's unpaid electric bill as a condition of getting service in her own name.

On cross-examination, petitioner acknowledged that service was established in her name at 2700 Spruce Drive, Manchester, NJ, in September, 2008, only after she entered into an agreement to accept responsibility for an outstanding service bill for an account at 2755 Ridgeway Road and make payment toward that outstanding balance. Her service was turned off in 2009 after she failed to make any payment to the current bill or the previous balance. Petitioner acknowledged that respondent properly transferred the account in the name of Dolores Scott at 2755 Ridgeway Road to the account of Dolores Scott at 2700 Spruce Drive, which petitioner took responsibility for when she reestablished service in her own name at Spruce Drive.

Petitioner acknowledged that her mother, Louise Kearney, owned and lived at both 2755 Ridgeway Road and 2700 Spruce Drive, and that petitioner has used Ridgeway Road as a mailing address. Petitioner attempted to have service at Spruce Drive put into her mother's name. Her mother owned four properties, all on the same block, 2651, 2699 and 2700 Spruce Drive and 2755 Ridgeway Road.

Petitioner stated that in order to get lights turned on for her mother while residing at 2700 Spruce Street, a lease was fabricated to show that her daughter, Dolores Scott, lived at that address so that service could be turned on in her name. Dolores Scott never lived at 2700 Spruce Drive. "I don't mind saying it, I lied." Petitioner states that the fraud was necessary to continue to provide electric service for her mother, and that she would do whatever she had to in order to make that happen.

Petitioner's mother had accounts at both the 2700 Spruce Drive and 2755 Ridgeway Road address which had been terminated for nonpayment. Petitioner currently lives at 4 Edinberg Lane. Her electric service there is in the name of her mother, who does not reside at that address.

Respondent presented several exhibits and offered the testimony of Charles Howlett, John Shields and Amy Gibbs. Collectively they illustrated a picture of a long and winding history regarding petitioner's account involving petitioner, her mother, her

daughter, and other family members whereby the various members would arrange service for the various premises, fail to make payment, make payment arrangements to forestall termination of service, continue to fail to make payment, and, once termination has occurred, establish service in the name of another family member.

The witnesses also testified to the procedures followed by respondent in handling the matter, the efforts undertaken to avoid shutoff, the arrangements entered into and the multiple chances offered respondent offered and entered into in order to avoid a shutoff.

Based upon due consideration of the testimonial and documentary evidence presented at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following **FACTS**:

- 1) Service was established in the name of petitioner at 7700 Spruce Drive, Manchester, NJ on September 5, 2008 and remained in effect until May 13, 2009.
- 2) Petitioner's account was terminated on May 13, 2009 for non-payment.
- ~~3) During the period service was being provided to petitioner's account, petitioner made two payments; one on September 9, 2008 in the amount of \$246.00 and one on March 6, 2009 in the amount of \$200.00.~~
- 4) Petitioner has entered into a minimum of two (2) ~~payment agreements with respondent and has not~~ complied with either.
- 5) As a condition for establishing service to the premises in the name of petitioner, petitioner accepted responsibility for payment of an outstanding balance in the amount of \$6,089.80) for service to the same premises incurred under the name of Dolores Scott.

- 6) Concurrent with petitioner's accepting responsibility for the account and establishing service in her name, petitioner made payments approximately in the amount of \$2,200 toward her daughter's outstanding balance
- 7) At the time petitioner's service was terminated in May, 2009, her account had a balance of \$3,860.23 while a balance remained on the portion attributed to her daughter in the amount of \$5,643.80.
- 8) The account in petitioner's daughter's name for the premises was in service from September 8, 2005-April 29, 2008.
- 9) Dolores Scott, petitioner's daughter, never resided at the subject premises.
- 10) In order to establish service in petitioner's daughter's name, petitioner provided respondent with a fraudulent lease purporting to demonstrate that her daughter rented and resided at the subject premises.
Service was established in petitioner's daughter's name after respondent terminated service to the premises in August, 2005 when an investigation determined that the service was being provided in the name of a minor child; petitioner's granddaughter.
- 12) Service was also established in the name of petitioner's daughter at a nearby (.1 mile, per R-15) property, 2755 Ridgeway Road, after service was terminated to that property in the name of petitioner's mother for non-payment.
- 13) Both the Ridgeway Road and Spruce Drive properties were at all relevant times owned by petitioner's mother. Petitioner's daughter's service to the Ridgeway Road property was terminated for nonpayment in March

2009, and the balance migrated to petitioner's daughter's account at Spruce Drive.

- 15) During the time when service was terminated in petitioner's daughter's name and established in petitioner's name, service was reconnected to the Spruce Drive property without authorization of respondent.
- 16) Respondent dealt directly with petitioner with regard to all accounts herein described, regardless of the name on the account.

Although petitioner alleged through cross-examination the existence of medical need for electric services to be provided to the premises, petitioner offered no credible evidence either of medical need or of any attempt to provide notice of any such need to respondent, beyond assertion at cross-examination. Further, Mr. Shields testified credibly that respondent had no documentation for any medical condition at 2700 Spruce Drive.

CONCLUSIONS OF LAW

N.J.A.C. 14:3-3A.1 provides that the utility "shall have the right to suspend or curtail or discontinue service for any of the following reasons:"

3. For nonpayment of a valid bill due for service furnished at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2;

5. For any of the following acts or omissions on the part of the customer:

ii. Tampering with any facility of the utility;

iii. Fraudulent representation in relation to the use of service;

viii. Failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff;

[N.J.A.C. 14:3-3A.1

In the current matter, the record demonstrates, by a preponderance of the evidence and largely by admission of petitioner, that the valid bills for service were not paid, in violation of N.J.A.C. 14:3-3A.1(3); that respondents' facilities were tampered with, in violation of N.J.A.C. 14:3-3A.1(5)ii when service was reconnected without authorization; and that petitioner made fraudulent representations in relation to the use of service, in violation of N.J.A.C. 14:3-3A.1(5)iii when she provided a fraudulent lease to respondent to establish service in the name of a an individual who never resided at the premises

Furthermore, respondent's Tariff for Service provides, at section 2.04 respondent:

may refuse to initiate service or may discontinue service to an applicant...who is a member of the household...of a former customer then indebted to the Company for Services provided by the Company at any location, if the company has reason to believe that substantially the same household ...will or does occupy the premises to be or being served and that the purpose of the present or earlier application is or was to circumvent the payment of such indebtedness...[I]f the household...is not the same...the company can only transfer the outstanding balance of amounts owed to the company for services provided by the company to the former customer of record for service rendered at the prior location.

The burden of proof rests with the petitioner, as the party seeking relief, to demonstrate by a preponderance of credible evidence that the household in question is not the same. I **CONCLUDE** petitioner has not met this burden. The proceedings were adjourned at least twice to allow petitioner to produce witnesses who never

materialized; petitioner offered no documentary evidence to refute respondent's belief that the households were the same, nor did she offer any testimony to refute the findings, other than to assert that she does not believe she should be responsible for a bill that was her daughter's and will never pay it. To the contrary, the tariff makes clear that in certain events she can be so responsible.

Petitioner admitted under oath that she agreed to be held responsible for payment of the prior bill in order to establish service in September 2008. Petitioner also provided sworn testimony that she provided fraudulent information to respondent in 2005 in order to establish service in her daughter's name, which raises the question as to whether it is in fact her daughter's bill she is being asked to account for or in fact her own.

Despite not having the burden of proof, respondent did take efforts to establish many facts of this case, proceeding first with its case. Despite possessing a presumption of validity of its actions, respondent took care to demonstrate and lay out the thought process leading to its reasonable belief that service was being established for the same household at 7700 Spruce Street. That petitioner's mother has resided or had service in her name at both residences merely underscores the finding that the service requested is seeking to provide service in the name of another of the same household for purposes of avoiding the debt. To establish service now in the name of petitioner's mother would only serve to continue the cycle.

Accordingly, **I CONCLUDE** that respondent took reasonable action in terminating service to 7700 Spruce Street and that petitioner is responsible for payment for electric service as billed to her account. Petitioner has failed to meet her burden in proving otherwise. Petitioner's appeal should be **DENIED**.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner's appeal be **DISMISSED** with prejudice. Petitioner is **ORDERED** to remit payment to JCP&L for \$9,504.03 due and owing on her account or to make reasonable arrangements with JCP&L for

repayment. Absent such payment or reasonable arrangement, JCP&L, pursuant to section 2.04 of its tariff, is within its rights to continue to deny service to the household.

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, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 24, 2011

DATE



ELIA PELIOS, ALJ

Date Received at Agency: _____

October 24, 2011

Date Mailed to Parties: _____

/mamf

APPENDIX
LIST OF WITNESSES

For Petitioners:

Ernestine Westbrooks, petitioner

For Respondent:

Amy Gibbs, JCPL Revenue Protection Investigator

Charles J. Howlett

John Shields

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

None

For Respondent:

- R-1 Initial Complaint
- Supplemental Response
- Initial Complaint
- R-4 Initial Complaint
- R-5 Initial Complaint
- Detailed Statement of Account
- Initial Complaint
- Email Correspondence
- Bills
- R-10 Detailed Statement of Account
- ~~R-11 Detailed Statement of Account~~
- ~~R-12 Contract~~
- R-13 Record
- R-14 Record
- R-15 Google Map
- R-16 Statement of Account
- R-17 Screen Capture of Person Search
- Account Statement