



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

SHEILA FOUSHEE,
Petitioner

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent

) ORDER ADOPTING
) INITIAL DECISION
)
)
)
) BPU DOCKET NO. EC12030211U
) OAL DOCKET NO. PUC 07200-12

Parties of Record:

Sheila Foushee, Petitioner
Sheree L. Kelly, Esq., PSE&G Services Corporation

BY THE BOARD:

STATEMENT OF THE CASE

On March 6, 2012, Sheila Foushee ("Petitioner") filed a petition with the Board of Public Utilities ("Board") disputing billing charges by Public Service Electric and Gas ("PSE&G" or "Company") and alleging the Company's failure to return her security deposit. Petitioner sought \$25,000,000 for reimbursement and pain and suffering.

PROCEDURAL HISTORY

PSE&G filed an answer on April 20, 2012, denying that Petitioner was overbilled and asserting affirmative defenses including Petitioner's failure to state a claim and the Company's conformance with its Tariff, applicable New Jersey statutes and Board regulations. On May 21, 2012, the Petition was transmitted to the Office of Administrative Law 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 -13.

A hearing was held on September 10, 2012 before Administrative Law Judge (ALJ) Kimberly A. Moss ("ALJ Moss") after Petitioner requested and was granted an adjournment. At the

conclusion of the hearing, ALJ Moss issued an Initial Decision on September 20, 2012 dismissing the petition. No exceptions were filed.

FINDINGS OF FACTS

ALJ Moss properly outlined several facts relevant to this dispute. Petitioner resides in a two-family residential home in East Orange, New Jersey which is supplied with gas and electricity by PSE&G. Petitioner asserted generalized claims including outrageous bills dating back over twenty years and PSE&G's failure to return her 1983 security deposit. (Tr. 4:11-13; 5: 13-14; 6:12-21).

With respect to Petitioner's security deposit, she alleged that the Company failed to return her security deposit and accruing nine percent interest. (Tr. 6:24-25; 7:2-6; Petition at 5). Regarding alleged overbilling by PSE&G, Petitioner testified that she paid PSE&G a mortgage payment in the amount of \$900 to \$1,000 and argued that an accounting had not been performed. (Tr. 8:11-13;10:10-16;10:24-25;11:2-7). Petitioner presented no exhibits or evidence to the court other than her limited testimony concerning alleged outrageous billing by PSE&G and the Company's failure to return her security deposit. (Tr. 12:12-18).

PSE&G presented the testimony of Edward Sullivan, the Company's manager of regulatory services. Mr. Sullivan has worked for the Company for 45 years and is responsible for reviewing customer accounts when a billing dispute arises. (Tr. 14:i10-17). Mr. Sullivan reviewed Petitioner's account history dating back to June 2006 and had the Company's accounting department prepare a statement of account for the first floor unit of Petitioner's home. That statement was entered into evidence as R-1. (Tr. 15:9-13).

Mr. Sullivan explained that Petitioner initially had two accounts with the Company. Account ██████████5606 was tied to the second floor unit but was finalized in September 2011 and carried no balance. (Tr. 17:3-14). Account ██████████4105, which is tied to the first floor, is an active gas and electric account and is reflected in R-1. The first floor gas meter is located inside the home and readings of that meter are done remotely. The first floor electric meter is located outside where it is accessible for actual meter readings. (Tr. 18:11-23).

Upon review of Petitioner's account history, Mr. Sullivan failed to find any occasion where Petitioner was charged \$900 to \$1000 for electricity. To the contrary, the highest electricity charge for that period was in August 2012 for \$94.57. (Tr. 19:5-17). Overall, while Petitioner's account history reflected higher billed amounts in the winter due to an increased use of heat, there was nothing unusual about that seasonal fluctuation or about the billing or payment cycles. (Tr. 20:6-12). Bills were typically paid as they were received. (Tr. 20:6-7).

However, Petitioner's payment behavior changed after December 2011, which was the last month that she paid her utility bill. As a result of non-payment, Petitioner has a balance of \$1,493 through August 2012. (Tr. 21:10-15).

Mr. Sullivan also addressed Petitioner's allegation concerning her security deposit. Mr. Sullivan explained that it is Company policy to return a customer's security deposit with interest after one year for accounts in good standing. However, if a customer has a balance on their account, then only the interest is refunded while the security is maintained for a second year. At the end of the second year, the deposit is either refunded to the customer or retained to cover any

outstanding balance. (Tr. 22: 16-25; 23:2-3). While the Company does not maintain documentation going back 20 years to confirm whether Petitioner's security deposit had been refunded, Mr. Sullivan believes that her security had been returned. (Tr. 23:6-8).

DISCUSSION

After review and consideration of the entire record, the Board HEREBY ADOPTS the decision of ALJ Moss to dismiss the petition but REJECTS the statute of limitations as a basis for the dismissal. Rather, the Board is satisfied that there is a sufficient basis to dismiss the petition based on Petitioner's inability to satisfy her burden of proving that PSE&G has overbilled her, wrongly retained her security deposit or otherwise violated the Company's Tariff or Board regulations.

Petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). This petition raises the issues whether Petitioner was properly charged for electric and gas usage at her two-family home from 1981 to the present and whether PSE&G wrongly retained her security deposit. Petitioner failed to satisfy her burden as to either claim.

Petitioner argued that her bills are outrageous and that the Company failed to return her security deposit with interest. But other than general statements concerning outrageous bills and her testimony that she was charged \$900-\$1000 for electricity one month, Petitioner presented no evidence that PSE&G was overcharging her for utilities or otherwise violating its Tariff or Board rules. Nor did Petitioner satisfy her burden of showing that she either did not receive her security deposit or that she was even entitled to its return. As ALJ Moss explained, Petitioner failed to prove that her account was in good standing which would have entitled her to its return.

Furthermore, the testimony of Mr. Sullivan belies Petitioner's allegations. After review of Petitioner's account history, Mr. Sullivan concluded that she had not been overbilled nor was there reason to believe that the Company had wrongfully withheld her security deposit.


DECISION

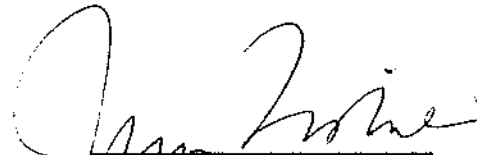
After review and consideration of the entire record, the Board HEREBY ADOPTS the decision of ALJ Moss to dismiss the petition, solely on the basis of Petitioner's inability to meet her burden of proving that PSE&G has overbilled her, wrongly retained her security deposit or otherwise violated the Company's Tariff or Board regulations. In light of that finding, the Board REJECTS the conclusion of ALJ Moss concerning any impact of the statute of limitations on Petitioner's claims and makes no determination as to that finding.


DATED: 11/20/12

BOARD OF PUBLIC UTILITIES
BY:

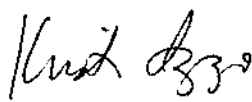

ROBERT M. HANNA
PRESIDENT



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.


SHEILA FOUSHEE

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC12030211U

OAL DOCKET NO. PUC07200-12

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CASE MANAGEMENT

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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INITIAL DECISION

OAL DKT. NO. PUC 07200-12

AGENCY DKT. NO. EC12030211U

SHEILA FOUSHEE,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,**

Respondent.

Sheila Foushee, petitioner, appearing pro se

Sheree Kelly, Esq., appearing on behalf of respondent

Record Closed: September 10, 2012

Decided: September 20, 2012

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Sheila Foushee (Foushee 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 electric service provided to 116 Burchard Avenue, East Orange, New Jersey. On May 21, 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 conference was conducted on June 11, 2012, at which time a hearing was scheduled. The hearing was held on September 10, 2012, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

Having heard the testimony, observed the witnesses, and reviewed the exhibits, I **FIND** the following **FACTS**:

Foushee is a customer of PSE&G, which provides gas and electric service to the property owned by her located at 116 Burchard Avenue, East Orange, New Jersey. Foushee had two accounts with PSE&G for the 116 Burchard Avenue property. She had the house weatherproofed. She does not have copies of any PSE&G bills for the past six years. Petitioner paid a \$400 security deposit on July 29, 1983.

Ed Sullivan has worked for PSE&G as a manager of regulatory services. He reviews billing-dispute cases that come before the OAL. Petitioner had an account for the second floor of 116 Burchard Avenue, East Orange, N.J. That account was closed on September 22, 2011, and it does not have an outstanding balance. The account that is presently active is account number [REDACTED]105. The largest electric bill for account number [REDACTED]4105 was \$97 in August 2012. The gas charges are higher in the winter. Petitioner's PSE&G bill was paid in full every month from May 19, 2006, through December 5, 2011. Petitioner has not made any payments to PSE&G since December 5, 2011.

When PSE&G requires a security deposit from a residential customer, if the customer makes timely payments for one year, the security deposit and the interest are returned to the client. If the client does not make timely payments for one year, the interest is returned to the client and the deposit is held for an additional year. The deposit is not held for more than two years. It is unclear if petitioner's security deposit was returned to her.

Petitioner provided a voluminous packet of documents prior to the hearing. Most of the documents that she provided were not related to her billing dispute with PSE&G. Most of the documents that were related to her billing dispute with PSE&G were more than twenty years old. One of the documents provided by petitioner shows that between 1983 and 1984 she did not pay the PSE&G bill in full on a monthly basis.

LEGAL ANALYSIS AND CONCLUSIONS

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).

This petition concerns the issue of whether petitioner has been properly charged for gas and electric services. Petitioner has provided no evidence that the gas and electric bills of PSE&G are inaccurate. I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that her PSE&G gas and electric bills were inaccurate.

Petitioner testified that her security deposit was not returned. The security deposit was made twenty-nine years ago. If she was paying her bill in a timely manner the money and interest would be returned to her. There was no testimony that between 1983 and 1984 petitioner paid her bill in a timely manner. The documents provided by petitioner show that between 1983 and 1984 she did not pay the PSE&G bills in full on a monthly basis. I **CONCLUDE** that petitioner's claim for return of the security deposit is time-barred since the claim was made twenty-eight years after the money was due and owing. In addition, during 1983 and 1984 she did not pay the PSE&G bills in full on a monthly basis.

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.

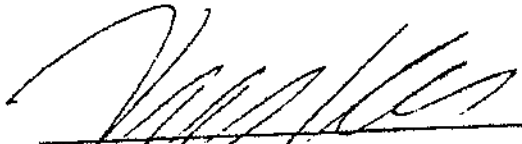
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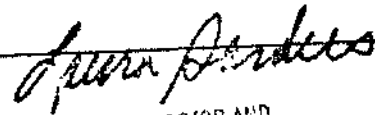
Date Received at Agency:

Date Mailed to Parties:

ljb

SEP 24 2018


KIMBERLY A. MOSS, ALJ


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

WITNESSES

For Petitioner:

None

For Respondent:

Ed Sullivan

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Statement of Account of Sheila Foushee from May 19, 2006, through August 13, 2012