



Agenda Date: 8/21/13

Agenda Item: 7A

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

MARGARET ADEBAYO)	ORDER ADOPTING
Petitioner,)	INITIAL DECISION
)	
V.)	
)	
PIVOTAL UTILITY HOLDINGS, INC., D/B/A)	
ELIZABETHTOWN GAS,)	BPU DKT. NO. GC12080747U
Respondent.)	OAL DKT. NO. PUC 14360-12

Parties of Record:

Emmanuel C. Nwofite, Esq. appearing on behalf of petitioner (Margaret Adebayo)
Deborah M. Franco, Esq., appearing on behalf of respondent (Cullen & Dykman, LLP)

BY THE BOARD:

STATEMENT OF THE CASE

By petition filed with the Board of Public Utilities ("Board") on or about August 13, 2012, Margaret Adebayo ("Petitioner") disputes her \$7,000 Elizabethtown Gas ("Respondent") bill for gas usage at her Scotch Plains, New Jersey home. Petitioner alleged that this amount stems from gas service at the previous Hillside, New Jersey address of her husband, John Adebayo, before they were married and for which she is therefore not responsible. Petitioner seeks the restoration of her gas service and a proper accounting related to any amount owed for service to Petitioner's Scotch Plains home between August 2011 and February 2012.

PROCEDURAL HISTORY

On October 22, 2012, the petition was transmitted to the Office of Administrative Law ("OAL") 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. A telephone conference took place in or around December 2012 followed by an evidentiary hearing on June 19, 2013. Administrative Law Judge Kimberly A. Moss ("ALJ Moss") issued an Initial Decision on June 28, 2012, dismissing the petition. Neither party filed exceptions.

FINDINGS OF FACT

Several of the relevant facts in this dispute are contained in the Initial Decision and in the transcript of the evidentiary hearing. Petitioner has resided at the same residence in Scotch Plains, New Jersey for over 20 years, during which time she has been a gas customer of record under account number xxxxxx730. Petitioner married her husband John Adebayo in 2007, at which point he moved to Petitioner's Scotch Plains home. In May 2011, Petitioner received a shut off notice from Respondent stemming from gas usage at the Scotch Plains home. Petitioner's gas service was eventually shut off and then reinstated upon Ms. Adebayo's remittance of \$426 to Respondent. (Tr. page 10, lines 11-12; page 37, lines 13-16.) At that time, a new account number was issued (account number xxxxxx463) in accordance with Respondent's common practice and Tariff provisions. Account number xxxxxx730 was discontinued.

In September 2011, Petitioner received a bill in the amount of \$6,982.82, with \$6,663.21 of the bill stemming from an account tied to Mr. Adebayo's prior residence in Hillside. At the evidentiary hearing, Respondent did not deny that it sought payment from Petitioner for charges related to the Hillside residence, but agreed to forgo collection in this action for any amount related to the Hillside account. With that, Respondent agreed to seek only the \$891 outstanding balance for gas service at Petitioner's Scotch Plains home from August 2011 through February 2012. (Tr. page 35 lines, 17-25.)

Through the direct examination of its witness, customer relations employee Aurora Balbuena, Respondent introduced Petitioner's August 2011 through February 2012 Scotch Plains gas bills totaling \$891, all of which were mailed to Petitioner. (Tr. page 50, lines 7-10; Initial Decision, page 3.)¹ Ms. Balbuena testified that Petitioner had not paid any portion of the \$891 bill. (Tr. page 45, lines 9-19; page 49, lines 24-25; page 50, line 1.) Petitioner admitted that she received these bills. (Initial Decision at page 2.)

DISCUSSION AND FINDINGS OF LAW

Petitioners bear 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 issue whether Petitioner was properly charged for gas usage at her Scotch Plains home between August 2011 and February 2012.² Petitioner argued that she was not responsible for the Hillside charges and was never billed for the \$891 which Respondent claims is due on the Scotch Plains account. (Petition para. 15; Tr. page 25, lines 10-14.)

As mentioned earlier, Respondent waived its right to collect from Petitioner any charges stemming from the Hillside account. As for charges accruing to Petitioner's Scotch Plains account, Judge Moss reasonably concluded that Respondent had mailed to Petitioner a copy of each monthly gas bill stemming from the August 2011 through February 2012 gas service. That information was provided through the testimony of Ms. Balbuena, who produced records of the

¹The Initial Decision and Petitioner's billing exhibits illustrate a \$270 deposit due under the August 2011 billing statement. However, Respondent's calculation of the \$891 outstanding amount excludes \$270, which is presumed to be the deposit.

² As Respondent agreed at the evidentiary hearing to forgo recovery in this action for amounts owed for gas usage at Mr. Adebayo's former Hillside residence, the only remaining issue is whether Petitioner was properly charged for gas usage at her Scotch Plains home from August 2011 through February 2012.

bills which were mailed to Petitioner during the relevant period. Ms. Balbuena explained that each bill reflects the meter number, consumption in cubic feet converted into therms, cost per kilowatt hour and total cost due for usage during that period. (Tr. page 47, lines 13-22.) Petitioner presented no testimony or evidence to show that she was not properly charged for gas consumption during the relevant time period. Neither did Petitioner allege that the meter was malfunctioning nor that she was being charged a rate in excess of the allowable Tariff amount. Petitioner simply did not meet her burden and failed to establish any facts sufficient to rebut the evidence presented by Respondent that \$891 is owed to Respondent for gas usage at Petitioner's Scotch Plains home from August 2011 through February 2012.

DECISION


After review and consideration of the entire record, the Board **HEREBY FINDS** that the findings and conclusions of ALJ Moss are reasonable and accordingly, **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be dismissed.

DATED: 8/21/13

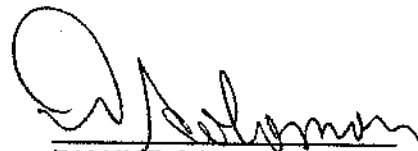
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

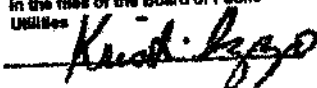

JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
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



MARGARET ADEBAYO, Petitioner

V.

PIVOTAL UTILITY HOLDINGS, INC., d/b/a ELIZABETHTOWN GAS, Respondent

SERVICE LIST

Margaret Adebayo
2361 North Avenue
Scotch Plains, New Jersey 07076

Mary Patricia Keefe, Esq.
Elizabethtown Gas
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Newark, New Jersey 07101-45029

Rec'd
7/18/13

RECEIVED

JUL 18 2013

BOARD OF PUBLIC UTILITIES
MAIL ROOM

REC'D



2013 JUL 18 PM 12 39 **State of New Jersey**
OFFICE OF ADMINISTRATIVE LAW

NO DPU
CASE MANAGEMENT

INITIAL DECISION

OAL DKT. NO. PUC 14360-12

AGENCY DKT. NO. GC12080747U

MARGARET ADEBAYO,

Petitioner,

v.

ELIZABETHTOWN GAS,

Respondent.

Emmanuel C. Nwotite, Esq., for petitioner

Deborah M. Franco, Esq., for respondent

Record Closed: June 19, 2013

Decided: June 28, 2013

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Margaret Adebayo (Adebayo or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Elizabethtown Gas (Elizabethtown) for gas service.

On October 22, 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. Status conferences were held on various dates. The hearing was held on June 19, 2013. I closed the record at that time.

FACTUAL DISCUSSION AND FINDINGS

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

Adebayo has been a residential gas customer of Elizabethtown for over twenty years, residing at 2361 North Avenue, Scotch Plains, New Jersey the entire time. She married John Adebayo in 2007. Prior to the marriage John Adebayo lived in Hillside, New Jersey. In May 2011, petitioner received a shut-off notice from Elizabethtown. Elizabethtown cut off the gas service in May 2011. John Adebayo paid the outstanding gas bill in July 2011 and the service was restored. Once gas service has been shut off, if the bill is not paid within ten days the account is closed. Once the outstanding bill is paid a new account is established with a new account number. Petitioner's account number in May 2011 was 5661866730. Once the service was restored petitioner's account number became 9293198463.

Petitioner received a bill in September 2011 in the amount of \$6,982.86. \$6,663.21 of this bill was a previous account balance from the Hillside residence. At the hearing Elizabethtown stated that it will not charge petitioner for any gas provided to the Hillside residence. Its position is that petitioner has an account balance from the period of August 5, 2011, thru February 27, 2012, in the amount of \$891 for gas consumption at 2361 North Avenue, Scotch Plains, New Jersey, which petitioner denies.

Exhibits P-1, P-2, P-4, P-5, P-6, P-8, P-9, and P-10 reflect the bills from Elizabethtown to Adebayo for gas consumption from August 5, 2011, thru February 27, 2012, at 2361 North Avenue, Scotch Plains, N.J. Petitioner admitted that she received these bills. Each of the bills has current charges as well as a previous account balance. Each bill also shows an actual meter reading was done to determine the gas consumption. There was no allegation or testimony that the meters were not operating

properly. The current charges for Adebayo for August 2011 thru February 2012 were as follows:

Sept 8, 2011	\$319 (including a \$270 deposit charge and \$15 service establishment clause)
October 10, 2011	\$21.20
November 8, 2011	62.47
December 8, 2011	\$126.74
January 11, 2011	\$232.55 (including a \$15 field visit charge)
February 7, 2012	\$218.92
March 12, 2012	\$15 (field visit charge)
March 20, 2012	\$164.67 (billing period from February 3, 2012, to February 27, 2013)

There was no evidence to indicate that current charges as indicated on Exhibits P-1, P-2, P-4, P-5, P-6, P-8, P-9, and P-10 are for any residence other than petitioner's residence at 2361 North Avenue, Scotch Plains. Petitioner did not pay the current charges from August 2011 thru February 2012.

LEGAL ANALYSIS AND CONCLUSION

The issue in this case is whether petitioner was properly billed by Elizabethtown for the period from August 2011 thru February 2012. Respondent has agreed to not bill Adebayo for charges at the Hillside property. Her account number was changed in accordance with the policy of Elizabethtown when a customer requests a reconnection of service after ten days. Petitioner's bills were based on actual meter readings. There was no testimony that the meter was not functioning properly. Petitioner did not provide any testimony or evidence that the current charges on the bills for August 2011 thru February 2011 were for any account other than petitioner's account for 2361 North Avenue, Scotch Plains, New Jersey.

I **CONCLUDE** petitioner did not prove by a preponderance of the evidence that she was improperly billed by Elizabeth town for charges from August 2011 thru February 2012.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the respondent will not bill petitioner for charges incurred for the Hillside New Jersey residence.

It is further **ORDERED** that petitioner has an outstanding balance of \$891 for charges from August 2011 thru February 2012.

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.

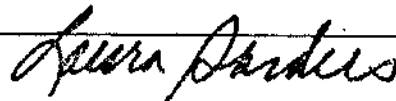
6-28-13

DATE



KIMBERLY A. MOSS, ALJ

Date Received at Agency:



Date Mailed to Parties:

JUL - 2 2013

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

WITNESSES

For Petitioner:

John Adebayo

For Respondent:

Aurora Balbuena

EXHIBITS

For Petitioner:

- P-1 Elizabethtown Gas bill of petitioner dated September 8, 2011 ✓
- P-2 Elizabethtown Gas bill of petitioner dated October 10, 2011 ✓
- P-3 Shut-Off Notice dated September 24, 2011 ✓
- P-4 Elizabethtown Gas bill of petitioner dated November 8, 2011 ✓
- P-5 Elizabethtown Gas bill of petitioner dated December 8, 2011 ✓
- P-6 Elizabethtown Gas bill of petitioner dated January 11, 2012 ✓
- P-7 Shut-Off Notice dated January 27, 2012 ✓
- P-8 Elizabethtown Gas bill of petitioner dated February 7, 2012 ✓
- P-9 Elizabethtown Gas bill of petitioner dated March 12, 2012 ✓
- P-10 Elizabethtown Gas bill of petitioner dated March 20, 2012 ✓
- P-11 Elizabethtown Gas bill of petitioner dated May 31, 2011

For Respondent:

- R-1 Letter of respondent's counsel containing a chart and copies of bills dated April 29, 2013