


meters had occurred in this matter. Accordingly, the ALJ required that the Respondent provide the Petitioner with an accurate statement of account.

The ALJ further ordered that the required statement of account not include \$831.41 in late payment charges; a \$158.78 account activity charge; a \$181.41 charge entered April 15, 2008; a \$1,396.19 charge entered September 11, 2009; a \$1,396.00 charge entered September 14, 2009; a \$1,396.00 charge entered September 28, 2009; a \$707.00 charge entered September 17, 2010; a \$707.00 charge entered October 13, 2010; and a \$707.81 charge entered October 13, 2010.

After a thorough review and consideration of the record in this matter, the Board **HEREBY FINDS** the findings and conclusions of the ALJ to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Therefore, based on the foregoing, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Respondent comply with the requirements set out in the Initial Decision.

DATED: 6/15/11

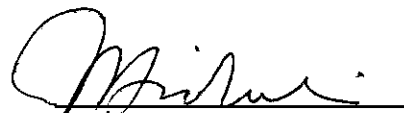
BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



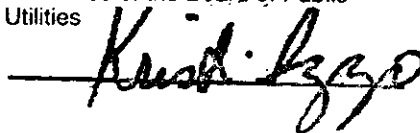
NICHOLAS ASSELTA
COMMISSIONER

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



AIRCRAFT HVAC PRODUCTS C/O JAY KOENIG

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10100802U
OAL DOCKET NO. PUC00553-11

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 00553-11

AGENCY DKT NO. EC10100802U

**AIRCRAFT HVAC PRODUCTS C/O JAY
KOENIG,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,**

Respondent.

Yakov Koenig, appearing pursuant to N.J.A.C. 1:1-5.4(a)(5) for petitioner

Alexander Stern, Esq., for respondent

Record Closed: March 16, 2011

Decided: April 7, 2011

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner AirCRAFT HVAC Products c/o Jay Koenig (AirCRAFT or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Public Service Electric and Gas Company (PSE&G) for electric and gas service provided to 12 East 5th Street, Paterson, New Jersey.

On January 7, 2011, 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 8, 2011, at which time a hearing was scheduled for March 16, 2011. The hearing was held on March 16, 2011, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed, and therefore **FOUND** as **FACT**:

AirCraft is an electric and gas customer of PSE&G. Its warehouse is located at 12 East 5th Street, Paterson, New Jersey. PSE&G admits that AirCraft should be credited \$831.40 for late fees, \$184.41 for charges of April 15, 2008, and \$158.78 for other account activity charges.

Testimony

Yakov Koenig

Yakov Koenig, also known as Jay Koenig, testified that AirCraft's bills from PSE&G would reflect a charge, the charge would then be reversed, and it would then be reinstated. The bills did not reflect usage and were based on demand. AirCraft is not a manufacturing organization. Koenig does not believe AirCraft owes PSE&G.

AirCraft's service was shut off on two occasions. On one occasion \$1,400 was paid to restore service, and on the other occasion \$1,600 was paid to restore service. Most of the PSE&G bills were estimates. In October 2009 and December 2009 AirCraft received two monthly billing statements each month from PSE&G.

Steven Schreiber

Steven Schreiber, AirCraft's vice president of business development, testified that the meter room is locked, but has a note on the door with a phone number to call if anyone needs to enter. He stated that no manufacturing goes on in the warehouse.

Ed Sullivan

Ed Sullivan works for PSE&G as a liaison with the BPU in the resolution of customer disputes that come before the OAL. He has handled customer disputes for over forty years. Sullivan testified that petitioner complained that the PSE&G bills were too high and there was a problem with the piping. Sullivan requested a statement of account and sent a representative to verify the readings. The representative confirmed that the meter was working properly. The warehouse did not have insulation on the ceiling. The meters appeared to be working properly. The meter and the piping were the proper sizes. A second representative from the Northern Gas Division of PSE&G was also sent to the premises.

AirCraft was billed as a general service gas heating (GSGH) customer of PSE&G. GSGH customers are non-residential customers that do not use large amounts of gas. If the bill on a commercial account is not paid within forty-five days PSE&G charges a late fee.

Sullivan admitted that AirCraft's statement of electric and/or gas billing and payment (statement of account) is not typical. The account totals for gas on the statement of account show a negative balance of \$1,965.50. Estimated bills are based on prior usage at that premises. That prior usage could be from the previous occupiers of the premises. Once an actual reading is done a true-up would be done to reflect actual usage.

At the time that the bills in dispute were accrued, PSE&G instituted a new billing system. PSE&G called the system I-Power. PSE&G provided training to its employees on the I-Power system.

The statement of account of AirCraft has a number of charges that were cancelled. The statement of account is color coded. The charges that were canceled were in red print. In April 2009 petitioner received a credit for gas charges for the period of December 12, 2008, through March 5, 2009, of \$4,554.27. On May 27, 2009, that gas credit was reversed, and petitioner was charged \$4,555.75, which includes a rebilling fee. On that same date the \$4,554.27 and \$1.48 charges were again credited to petitioner. The charges of June 2009 and July 2009 were cancelled.

On September 11, 2009, petitioner paid \$1,400.00. On that same date, PSE&G deactivated an installment plan and created an installment plan. On September 11, 2009, the statement of account, in the "other activity" column, has a charge of \$1,396.19. On September 14, 2009, and September 28, 2009, the statement of account, in the "other activity" column, has charges of \$1,396.00. These three charges were added to the running balance. Sullivan could not account for these charges. He stated that petitioner should receive a credit for these charges.

On September 17, 2010, the statement of account, in the "other activity" column, has a charge of \$707.00. On October 13, 2010, the statement of account, in the "other activity" column, has charges of \$707.00 and \$707.81. These amounts were added to the running balance. Sullivan admitted that he could not account for these three charges, and stated that AirCraft should be credited for these charges.

Sullivan initially said that the statement of account was accurate, but a person could be confused, because the account totals have a negative balance for the gas charges. He later said that the statement of account was not entirely accurate.

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

The statement of account is not accurate. The charge of \$4,554.27 for gas service from December 12, 2008, through March 5, 2009, was credited to petitioner. On May 27, 2009, that credit was reversed, and petitioner was charged \$4,555.75, which includes a rebilling fee. On the same date, May 27, 2009, \$4,554.27 was again credited to petitioner, along with the \$1.48 fee. Sullivan admitted that he could not determine the reason for the three \$1,396.00 charges in September 2009, and the account should be credited for those charges. Sullivan also admitted that he could not determine the reason for three \$707.00 charges in September 2010 and October 2010, and the account should be credited for those charges. On August 12, 2009, petitioner paid \$1,400.00 to have the gas and electric service restored. On September 13, 2010, petitioner paid \$1,598.00 to have the gas and electric service restored. In October 2009 and December 2009, petitioner received two billing statements each month. The statement of account has discrepancies. Late fees on July 13, 2009, November 11, 2009, and November 16, 2009, were deducted from, not added to, the running balance. A payment of \$190 on August 11, 2009, was not deducted from, but added to, the running balance. The third page of the statement of account has the amount of \$3,239.91 as the amount billed for the gas and electric charges on that page of the statement. When each item in the "amount billed" column is added together, the actual amount billed for the third page of the billing statement is \$4,903.90. Petitioner paid PSE&G \$9,006.71 from March 19, 2008, through December 30, 2010. AirCraft's meters were working properly.

This tribunal has no jurisdiction to award damages in this matter.

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 which 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 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).

This petition concerns the issues of whether petitioner has been properly charged for gas and electric services and the accuracy of the meters. Respondent has admitted to billing errors in the statement of account. Respondent agreed to cancel the late-fee charges in the amount of \$831.41, the "other activity" charges in the amount of \$158.78, and charges of April 15, 2008, of \$184.41. Sullivan admitted that he could not determine the reason for two charges of \$707.00, one charge of \$707.81, two charges of \$1,396.00 and one charge of \$1,396.19. Respondent admitted that the statement of account was not entirely accurate. A review of the statement of account shows payments not being included in the running balance, late fees being deducted from the running balance, and charges for which the reason cannot be determined. The total for amounts billed on page three of the statement of account is not accurate. I **CONCLUDE**, based on the admissions of respondent and the inaccuracy of the statement of account, that petitioner has proven by a preponderance of the evidence that it was not properly billed. I further **CONCLUDE** that two charges of \$707.00, one charge of \$707.81, two charges of \$1,396.00 and one charge of \$1,396.19 should not be charged to petitioner.

The law is settled that the Legislature has not authorized the Board by statute to decide common-law tort actions such as petitioner has filed here because it cannot constitutionally do so. Brooks v. Pub. Serv. Elec. and Gas Co. 1 N.J.A.R. 243, 248 (1981) ("disputes alleging negligence, intentional tort, or any other common law cause of action for damages are within the jurisdiction of the courts and cannot constitutionally be entertained by the Board either on liability or damages issues"). I **CONCLUDE**, under Brooks, that the OAL does not have jurisdiction to hear petitioner's claim for damages.

Petitioner provided no evidence of any malfunction of the meters. I **CONCLUDE** that petitioner did not prove by a preponderance of the evidence that the meters malfunctioned.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the respondent provide petitioner with an accurate, simple and less complicated statement of account.

It is further **ORDERED** that in the above-ordered statement of account petitioner not be billed for the following: \$831.41 for late charges; \$158.78 for other account activity; \$184.41 for charges of April 15, 2008; one \$1,396.19 charge of September 11, 2009; one \$1,396.00 charge of September 14, 2009; one \$1,396.00 charge of September 28, 2009; one \$707.00 charge of September 17, 2010; one \$707.00 charge of October 13, 2010; and one 707.81 charge of October 13, 2010.

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, 2 Gateway Center, Suite 801, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 7, 2011



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

April 7, 2011

Date Mailed to Parties:

ljb

WITNESSES

For Petitioner

Yakov Koenig

Steven Schreiber

For Respondent

Ed Sullivan

EXHIBITS

For Petitioner

P-1 Statement of Electric and/or Gas Billing & Payment of AirCRAFT HVAC Products

P-2 Two PSE&G monthly statements for October 2009

P-3 Two PSE&G monthly statements for December 2009

P-4 Article in the October 13, 2009, edition of the Herald News

For Respondent

R-1 Account Investigation Field Report dated February 9, 2001

R-2 Color-Coded Statement of Electric and/or Gas Billing & Payment of AirCRAFT HVAC Products