



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

LARRY J. YATES,  
Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,  
Respondent.

) ORDER DENYING MOTION  
) FOR RECONSIDERATION  
)  
)  
)

) BPU DOCKET NO. EC10120885U  
) OAL DOCKET NO PUC 01958-11

Parties of Record:

**Larry J. Yates**, Petitioner, *pro se*  
**Sheree L. Kelly, Esq.**, Respondent, Public Service Electric and Gas Company

BY THE BOARD:

On December 2, 2010, Larry J. Yates ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to the billing dispute with Public Service Electric and Gas Company ("Respondent") for utility services rendered. On February 14, 2011 after the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition 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. The matter was assigned to Administrative Law Judge ("ALJ") Kimberly A. Moss.

**PROCEDURAL HISTORY**

During the OAL contested case proceedings, Petitioner filed an amended petition on March 24, 2011, which continued to dispute billing charges and named Staff of the Board of Public Utilities ("Board Staff") as a third party defendant on an alleged tort claim for the purported failure of Board Staff in addressing his billing dispute claims. On April 6, 2011, Board Staff moved to dismiss Petitioner's third-party complaint against Board Staff. On April 15, 2011, Petitioner filed opposition to the Board Staff's motion to dismiss Petitioner's third-party complaint. On that date, Petitioner also filed a motion to strike the Respondent utility's answer as out-of-time. On May 3, 2011, ALJ Moss converted Board Staff's motion to a motion for summary disposition on the issue of whether to compel joinder of Board Staff as a respondent and granted Staff's motion

dismissing the third party complaint. On June 8, 2011, Respondent filed opposition to the motion to strike its answer and moved for summary disposition. By Order, dated July 15, 2011, ALJ Moss determined that Respondent's answer was timely filed and granted Respondent's motion for summary disposition in part, leaving open the sole issue of whether Respondent had properly and accurately billed Petitioner for delivery charges. A hearing in this matter was held on December 5, 2011. ALJ Moss directed Respondent to submit documents regarding its tariff. Said documents were forwarded to ALJ Moss and Petitioner on December 6, 2011. Although he was allowed to submit a reply to the tariff submissions, Petitioner made no such reply.

The Board received ALJ Moss's Initial Decision on December 22, 2011. In the Initial Decision, ALJ Moss entered findings of fact and law on the alleged overbilling of service and delivery charges. ALJ Moss found Petitioner to be a gas and electric customer of Respondent. ALJ Moss found the service charge to be a component of the delivery charge. ALJ Moss further found that Respondent's tariffs allowed the utility to bill residential customers for delivery and distribution charges. ALJ Moss found Petitioner's bills showed an additional three-cent capital adjustment charge consistent with Respondent's tariff, Original Sheet No. 66 effective June 7, 2010, and an additional nine-cent capital adjustment charge consistent with Respondent's tariff, Revised Original Sheet 66, effective July 24, 2011. As noted by ALJ Moss in the July 15, 2011 Order, tariffs have the weight of law whether or not the customer is actually aware of it. Essex Cty. Welfare Bd. v. N.J. Bell Tel. Co., 126 N.J. Super. 417, 421 (App. Div. 1974). Accordingly, ALJ Moss concluded that the tariff sheets conclusively show that the charges to Petitioner were accurate, that Petitioner had not supported his case by a preponderance of the evidence, and dismissed the amended petition.

The Board, by its January 18, 2012 Order of Extension, requested and was granted a 45-day extension, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 17:27-18.8, in order to appropriately review the record and to issue a final decision. At that time, the administrative record was closed. Subsequent orders of extension were issued on March 1, 2012 and April 19, 2012 to appropriately review the voluminous record including exceptions and replies.

Following the Board's published January 18, 2012 Order of Extension, Petitioner submitted Exceptions received by the Board on January 24, 2012. These Exceptions included a one-page cover letter, a one-page Certificate of Service, a twenty-five page letter brief, a nine-page certification/statement of facts and exceptions, and a fifty-five page appendix in support of the Exceptions. Of the many arguments raised, Petitioner mainly takes exception with the Initial Decision in that: (1) the ALJ had erred in her legal analysis and application of law to facts by failing to consider facts before the ALJ and Petitioner's opposition to the utility's request to answer out-of-time (Exceptions at 4); (2) Petitioner argues the charges were not reasonable (Exceptions at 7); (3) the ALJ's dismissal of Petitioner's third party complaint against Board Staff was "harmful error" (Exceptions at 14); (4) the ALJ acted with impropriety by rendering her decision on the same day Petitioner's motion was received to demonstrate that the ALJ was aware of Petitioner's request for transfer prior to submitting its decision to the agency head (Exceptions at 20); and by alleging his right to appeal is jeopardized.

After review and consideration of the entire record that existed at the time and by Order, dated June 18, 2012, the Board affirmed the findings of fact and conclusions of law in the Initial Decision as reasonable and, accordingly, accepted those findings and further found that the Initial Decision should be adopted in its entirety.

In its June 18, 2012 Order, the Board noted Petitioner's Exceptions as out-of-time and did not consider them. N.J.A.C. 1:1-18.4(a) provides that a party may file written exceptions with the Board by serving a copy of the exceptions to the Board, all other parties, and the judge within 13 days from the date of the judge's initial decision was mailed. Any opposing party may file a reply to the exception with the agency within five days. N.J.A.C. 1:1-18.4(b)(3)(d). If exceptions are properly filed after receipt of the initial decision, the Board disposes of the exceptions and answers on the papers. N.J.A.C. 14:1-8.2. However, Respondent did not reply to Petitioner's Exceptions. As noted earlier, the Initial Decision was submitted to the Board on December 22, 2011, making the January 24, 2012 exceptions submission by Petitioner late by at least three weeks. Accordingly, the Board did not formally address them, consistent with N.J.A.C. 1:1-18.4(a). In its June 18, 2012 Order, the Board found that Petitioner's Exceptions were submitted out-of-time pursuant to N.J.A.C. 1:1-18.4(a) and concluded that the ALJ's decision that the petition in the matter be dismissed was correct.

On June 27, 2012, the Board received papers from Petitioner (the "June 27, 2012 filing") including a two-page letter, dated June 22, 2012, followed by a certified mail return receipt copy, a copy of a one-page cover letter, dated January 20, 2012, followed by the certificate of service challenging the date the Initial Decision was received by Petitioner and acknowledging the Exceptions submitted.

### **DISCUSSION AND FINDINGS**

Upon receipt of Petitioner's June 27, 2012 filing and by this Order, the Board converts Petitioner's June 27, 2012 filing to a motion for reconsideration of the Board's refusal to consider the late-filed Exceptions as within time.

N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. Petitioner did not file a motion or otherwise conform to the requirements of the regulation. However, the Board has the power to relax its administrative regulations if doing so permits the Board to effectively carry out its statutory functions. N.J.A.C. 14:1-1.2.

After review and consideration of the entire record, the Board **FINDS** that Petitioner's June 27, 2012 filing shall be deemed a motion for reconsideration. A motion for reconsideration may be filed with the Board within 15 days of the issuance of any final decision by the Board. The Board's order adopting the initial decision was published on June 18, 2012 and Petitioner's letter request was filed with the Board on June 27, 2012, therefore the Board **FINDS** that Petitioner's letter request filed on June 27, 2012 is a Motion for Reconsideration consistent with N.J.A.C. 14:1-8.6.

This Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the issues raised by Petitioner are sufficient to warrant reconsideration or modification.

Reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to

appreciate, the significance of probative, competent evidence. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). A party should not seek reconsideration merely based upon dissatisfaction with a decision. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). The moving party must show that the action was arbitrary, capricious or unreasonable. Ibid. By its June 18, 2012 Order, the Board affirmed the findings of fact and legal analysis of ALJ Moss and affirmed the finding that tariff charges levied by the utility were earlier deemed as just and reasonable by the Board's prior order. Petitioner's dissatisfaction with motion outcomes during OAL proceedings and the allegation that his right to appeal is prejudiced by the record being devoid of the Board's addressing the issue of Exceptions is without merit because Petitioner's right to appeal is not impaired by these decisions. Petitioner's January 24, 2012 Exceptions, merely revisit his original arguments claimed during OAL proceedings regarding the impropriety of Respondent's delivery charges and his belief that Board Staff should be subject to additional claims.

The Board may relax certain filing rules for good cause shown. N.J.A.C. 14:1-1.2. In Exceptions, Petitioner argues that the ALJ's December 27, 2011 denial of his December 20, 2011 motion for transfer to the Superior Court, Law Division for disposition was improper. (Exceptions at 2, 19). The jurisdiction of the OAL is derived from the transmitting agency, here the Board. Wood v. Dept. of Cmty. Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990) citing N.J.S.A. 52:14B-1 to -15. Therefore, jurisdiction over the Complaint must be derived from the transmitting agency. Wood supra 243 N.J. Super, at 196. The OAL is an independent office in the Executive Branch of the State Government, created by the Legislature and given the power to prescribe and enforce its own rules of practice and procedure. Ibid. The OAL's function is to conduct administrative hearings on behalf of the transmitting agency, and the OAL's authority is derivative of the authority of the transmitting agency as an adjudicative extension of that transmitting agency which retains authority to render the final administrative determination in this case. Ibid. Since the Board determined the matter to be a contested case consistent with N.J.A.C. 14:1-8.1, the Board authorized the OAL to conduct and complete contested case proceedings. The Board notes that Petitioner participated in administrative proceedings and hearings for one year, from December 2010 to December 2011, before making the motion before the ALJ. The Board **FINDS** that the ALJ's denial of the motion for transfer to the Superior Court, Law Division was correct, and that the ALJ appreciated the significance of jurisdictional limitations on a billing dispute to fall within administrative proceedings. See Cummings v. Bahr, supra, 295 N.J. Super. at 384. Petitioner's Exceptions raise the same arguments as those raised before the ALJ. Thus, even if the Board had considered the Exceptions, the Board would not have reached a different outcome because there is no new issue of fact or law raised by the Exceptions where Petitioner had notice, an opportunity to be heard, and his arguments were properly considered by the ALJ below. The Board's rejection of his Exceptions as untimely does not show that the Initial Decision is fatally flawed or wrong to the extent that the outcome would change.

Following extensive review, the Board **FINDS** that nothing in Petitioner's June 27, 2012 filing requires the Board to modify or otherwise reconsider its decision to exclude the Exceptions because good cause has not been shown to relax the rule requiring timely filing of exceptions. The Board **HEREBY FINDS** that the motion for reconsideration has not presented any facts or evidence of changed circumstances which would warrant rejection of the Board's June 18, 2012 Order or which meets any of the requirements of the regulation. Accordingly, the Board **HEREBY DENIES** Petitioner's June 27, 2012 filing.

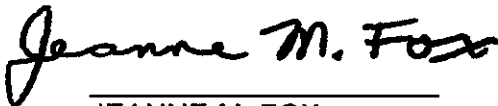
The Board **FURTHER FINDS** that there is no basis to modify its June 18, 2012 Order Adopting the Initial Decision, which, in part, rejected the January 24, 2012 Exceptions as filed untimely.

DATED: 7/20/12

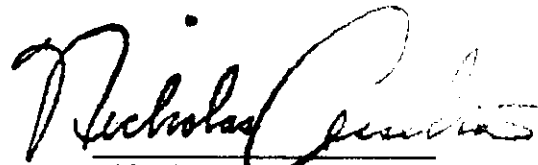
BOARD OF PUBLIC UTILITIES  
BY:



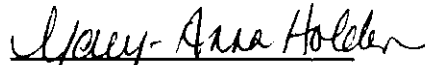
ROBERT M. HANNA  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER



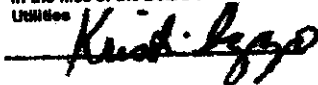
MARY-ANNA HOLDEN  
COMMISSIONER

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



LARRY J. YATES

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10120885U

OAL DOCKET NO. PUC01958-11

SERVICE LIST

Larry J. Yates  
492C Cedar Lane, #167  
Teaneck, New Jersey 07666

Sheree L. Kelly, Esq.  
PSEG Services Corporation  
80 Park Plaza – T5G  
Newark, New Jersey 07102-4194

Eric Hartsfield, Director  
Julie Ford-Williams  
Division of Customer Assistance  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Veronica Beke, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101