



Agenda Date: 1/23/13
Agenda Item: 7B

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

DARREN D. WILLIS,)	ORDER ADOPTING
Petitioner,)	INITIAL DECISION
)	
V.)	
)	
PIVOTAL UTILITY HOLDINGS, INC. d/b/a)	
ELIZABETHTOWN GAS,)	BPU Dkt. No. GC12040332U
Respondent.)	OAL Dkt. No. PUC 12138-12N

Parties of Record:

Darren D. Willis, appearing pro se
Deborah M. Franco, Esq., appearing on behalf of Respondent, Pivotal Holdings, Inc.

BY THE BOARD:

STATEMENT OF THE CASE

This matter involves a billing dispute filed on April 17, 2012, by Darren D. Willis (Petitioner) against Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas (Respondent).

PROCEDURAL HISTORY

On April 17, 2012, Petitioner filed a petition with the Board of Public Utilities (Board) in dispute of a \$2,870.46 gas bill for service to his Elizabeth, New Jersey residence. Petitioner claimed that he moved to Elizabeth, New Jersey in June 2010 and believed that the Elizabethtown utility bill which he regularly received comprised gas and electric service. Petitioner realized that this was not the case upon receiving a \$2,870.46 gas bill from Respondent in November 2011. Petitioner paid \$776 towards the outstanding balance, but sought a formal hearing to dispute the charges based on what he believed to be an unacceptable delay in Respondent's billing practice.

Respondent filed an answer on August 6, 2012, explaining that it discontinued gas service to Petitioner's second-floor residence in March 2009 at the request of the prior owner who was vacating the premises. Respondent recorded the final meter reading and thereafter locked and sealed the meter. In the normal course, Respondent continued to read the meter to ensure that

no gas was being consumed. However, between July 2010¹ and November 2011, the second-floor gas meter registered 2,266 cubic feet of consumption. Respondent's representative confirmed the unauthorized gas usage during a November 14, 2011 site visit and proceeded to shut off gas service at the curb to prevent further tampering and usage. Later that month, Petitioner requested gas service from Respondent. Respondent complied, but billed Petitioner \$2,870.46 for the amount of unauthorized usage from July 2010 through November 2011. Respondent asserted that both its Tariff and Board regulations acknowledge a customer's responsibility for payment of a utility obtained through meter tampering, citing, N.J.A.C. 14:3-3A.1; N.J.A.C. 14:3-4.6 and Elizabethtown Tariff §11.02, Original Sheet No. 27. Respondent asked that the relief sought by Petitioner be denied.

On September 6, 2012, the Board transmitted this matter to the Office of Administrative Law (OAL) for a 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. where it was assigned to Administrative Law Judge Kimberly A. Moss (ALJ Moss.) A telephone prehearing was held on September 26, 2012, followed by an evidentiary hearing on November 21, 2012. ALJ Moss accepted the following undisputed testimony as the factual findings upon which she based her decision.

Petitioner testified that he purchased his home in April 2009. (T3:24-25) He did not deny that he received gas service from Respondent at his Elizabeth address between July 2010 and November 2011. (T8:4-7)

Respondent presented the testimony of its customer relations representative, Aurora Balbuena, who is familiar with Petitioner's account. Ms. Balbuena confirmed that Respondent had sealed the second-floor gas meter at Petitioner's residence in March 2009 and Respondent continued to perform monthly meter checks in the normal course with no consumption registering through June 2010. However, the second floor meter registered gas consumption from July 2010 through November 2011 although no open gas account was tied to the second-floor. (T16:15-24) On November 15, 2011, an Elizabethtown representative confirmed that the sealed gas meter had been manipulated to allow gas usage and in fact registered 2266 cubic feet of consumption on that date. (T17:17-25) Petitioner was billed \$2,871.00 for consumption of which he remitted \$776 towards the balance. (T21:20-22)

Respondent also offered the testimony of Janet Papciak, an Operations Supervisor for Elizabethtown. Ms. Papciak confirmed the testimony of Ms. Balbuena, and added that the only way to remove the lock off of a meter is to cut the valve. (T36:18-21) The process of cutting the valve to reactivate the gas could be done by someone without training and would directly reactivate gas flow into the home. (T38:2-8)

Based on the testimony and the filings, ALJ Moss concluded that the second-floor meter had been locked and sealed in March 2009. Continued meter checks registered no consumption from March 2009 through June 2010, with gas usage commencing in July 2010. That usage translated to \$2,871 in gas charges during the unauthorized time frame. Petitioner paid \$776 with the balance still outstanding. ALJ Moss found that Petitioner received gas from July 2010 through November 2011 as a result of tampering and that he was responsible for payment for that usage. No exceptions were filed.

¹ Respondent's Counsel amended its answer at the evidentiary hearing to reflect 2010 as the correct year when illegal gas usage was detected. The initial answer read July 2011.

DISCUSSION AND FINDINGS

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.


Based upon the testimony and evidence presented and the Board's review of the entire record, ALJ Moss reasonably concluded that: (1) there was tampering with the second floor gas meter which allowed unlawful gas consumption from July 2010 through November 2011; (2) Petitioner consumed gas at the second-floor premises from July 2010 thru November 2011 as a result of the meter tampering; (3) Petitioner did not deny consuming gas at his second-floor residence during this time; and (4) Petitioner's contention that he was not billed until seventeen months after the first evidence of tampering registered had no bearing on the fact that he benefitted from the tampering through his consumption of gas and is responsible for the outstanding balance.


DECISION

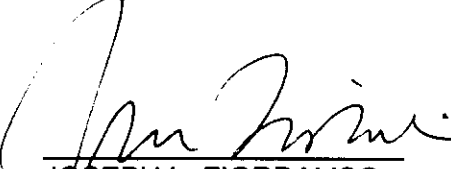
Upon careful review and consideration of the record, the Board **HEREBY FINDS** that the factual determinations and legal conclusions of ALJ Moss are reasonable and based upon sufficient, competent, and credible evidence. The Board **HEREBY ADOPTS** the Initial Decision in its entirety and **HEREBY ORDERS** that the petition be **DISMISSED**.

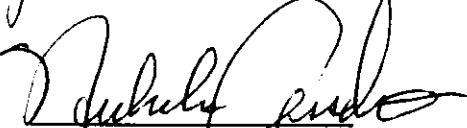
DATED: 1/23/13

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


DARREN D. WILLIS, Petitioner

V.

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

BPU DOCKET NO. GC12040332U
OAL DOCKET NO. PUC 12138-12N

SERVICE LIST

Darren D. Willis
411 Fulton Street, #2F
Elizabeth, New Jersey 07206

Deborah M. Franco, Esq.
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530-4850

Mary Patricia Keefe, Esq.
Pivotal Utility Holdings, Inc.
d/b/a Elizabethtown Gas
300 Connell Drive, Suite 3000
Berkeley Heights, New Jersey 07922

Eric Hartsfield, Director
Julie Ford-Williams, Bureau Chief
Division of Customer Assistance
Board of Public Utilities
44 S. Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Carolyn McIntosh, DAG
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101

Willis
12/14/12



REC'D

2012 DEC 13 PM 3 50

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

NJ BPU

CASE MANAGEMENT

INITIAL DECISION

OAL DKT. NO. PUC 12138-12

AGENCY DKT. NO. GC12040332U

RECEIVED
12/13/12
2012 DEC 12 PM 2 09
MALLON

DARREN D. WILLIS,

Petitioner,

v.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A/

ELIZABETHTOWN GAS,

Respondent.

Darren D. Willis, pro se

Deborah Franco, Esq., appearing on behalf of respondent (Cullen & Dykman, attorneys)

Record Closed: November 21, 2012

Decided: December 10, 2012

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Darren D. Willis (Willis or petitioner), filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Pivotal Utility Holdings Inc., D/B/A/ Elizabethtown Gas (Elizabethtown) for gas service provided to the second floor of 411 Fulton Street, Elizabeth, New Jersey.

On September 6, 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 was held on September 26, 2012. A hearing was held on November 21, 2012, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

As the following is undisputed, I **FIND** it to be the **FACTS** of this case:

Willis purchased the premises at 411 Fulton Street, Elizabeth, New Jersey in April 2010. 411 Fulton Street is a two-family house. The second floor was unoccupied until July 2010. Willis did not realize that the gas bill was separate from the electric bill. In November 2011, Willis received a notice from Elizabethtown regarding illegal gas usage at the premises. On November 14, 2011, a representative of Elizabethtown went to the premises and discovered that someone had tampered with the gas meter.

Testimony

Darren D. Willis

Willis stated that a representative of Elizabethtown came to his home in November 2010 to turn off the gas on the first floor. He contends that Elizabethtown should not have waited seventeen months before it billed him for the gas consumption.

Aurora Balbuena

Aurora Balbuena (Balbuena) works as a customer relations representative for Elizabethtown. She is familiar with Willis's account. On March 17, 2009, a field service representative from Elizabethtown locked and sealed Willis's second-floor gas meter. The meter was checked monthly since that time. Prior to July 2010, the meter readings showed zero consumption. In July 2010, the meter registered gas consumption at the premises. From July 2010 to November 2011, the second-floor gas meter registered

consumption. On November 15, 2011, a field service representative of Elizabethtown went to the premises and discovered that someone had tampered with the meter. Between July 2010 and November 2011, 2266 cubic feet of gas was consumed through the second-floor meter at a cost of \$2871. Willis has paid \$776 of the outstanding balance.

Janet Papaciak

Janet Papaciak (Papaciak) is an operations supervisor at Elizabethtown. She has been a supervisor for eighteen years, prior to that she was a field representative for sixteen years. When a certain amount of gas passes a meter that has been shut off, it activates a computer-generated report. Once a computer report is generated, a field representative is sent to the premises to determine why a meter that has been shut off is recording consumption. If the representative cannot get access to the premises, another representative is sent out in ninety days.

A field representative gained access to the premises in November 2011. At that time it was determined that the meter valve had been cut. The only way to get the lock off of the meter is to cut the valve. A person with no experience with gas can cut a valve to reactivate gas usage.

Having heard the testimony and witnesses I **FIND** the following additional **FACTS**:

On March 17, 2009, a field representative from Elizabethtown locked and sealed the second-floor gas meter for 411 Fulton Street, Elizabeth, New Jersey. The meter for the second floor was read monthly. From March 17, 2009, through June 2010 that meter registered zero gas consumption. In July 2010, the second-floor gas meter began registering consumption. There was gas consumption from July 2010 until the field representative went to the premises on November 14, 2011. Between July 2010 and November 2011, 2266 cubic feet of gas was consumed through the second-floor meter at a cost of \$2871. Willis has paid \$776 of the outstanding balance.

A report is triggered in the computer when a certain amount of gas passes through a meter that has been sealed and locked. Once the computer report is generated, a field representative is sent to the premises to determine the reason for the consumption. If the field representative cannot gain access to the premise, another field representative will go to the premises in ninety days.

There was tampering with the second-floor gas meter. The valve was cut. Cutting the valve is the only way to get the lock off of the meter. A person does not need any specialized knowledge to cut a valve off of a meter.

LEGAL ANALYSIS AND CONCLUSION

In this matter, it is clear that there was tampering with the meter. Petitioner consumed gas from July 2010 thru November 2011 on the second floor due to tampering with the meter. Petitioner does not deny gas consumption on the second floor during this time. Petitioner's contention is with the fact that he was not billed until seventeen months after the first evidence of tampering. Petitioner cannot benefit as a result of tampering with the gas meter.

I **CONCLUDE** there was gas consumption after the service was discontinued. This was due to tampering. Although the service was discontinued in March 2009, petitioner continued to receive gas due to tampering from July 2009 until the November 15, 2011.

ORDER

Based on the foregoing findings of facts and legal analysis, it is hereby **ORDERED** that the petition in this matter is **DISMISSED**.

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

OAL DKT. NO. PUC 12138-12

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.

12-10-17

DATE



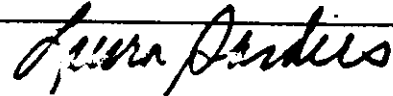
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Date Mailed to Parties:

ljb

DEC 11 2017



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

WITNESSES

For Petitioner:

None

For Respondent:

Aurora Balbuena

Janet Papciak

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 Field Service Records for 411 Fulton Street from March 17, 2009, to March 1, 2012
- R-2 Spread Sheet of the gas billing and consumption of petitioner from May 14, 2010, through November 16, 2012
- R-3 Tax Records for 411 Fulton Street, Elizabeth, NJ with a Deed Date of April 30, 2010, and a Date Recorded of June 1, 2010