



Agenda Date: 8/19/15  
Agenda Item: 7A

**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

<b>DIANNE ARGILA,</b>	)	ORDER ADOPTING
Petitioner	)	INITIAL DECISION
	)	
v.	)	
	)	
<b>NEW JERSEY NATURAL GAS COMPANY,</b>	)	BPU DKT. NO. GC13070636U
Respondent	)	OAL DKT. NO. PUC 13471-13

**Parties of Record:**

**Dianne Argila, pro se**  
**Eileen F. Quinn, Esq.,** on behalf of New Jersey Natural Gas Company

BY THE BOARD:

**STATEMENT OF THE CASE**

By petition filed with the New Jersey Board of Public Utilities (“Board”) on July 16, 2013, Dianne Argila (“Petitioner”) alleged billing and gas leak problems associated with gas service provided by New Jersey Natural Gas (“Respondent”). Specifically, Petitioner alleged that Respondent overcharged her for gas service over a sixteen-year period preceding her petition due to an undetected leak. The Initial Decision by Administrative Law Judge Elia A. Pelios (“ALJ Pelios”) dismissed Petitioner’s claims for failure to meet the burden of proof on the disputed issue of entitlement to any further relief from Respondent. The Board adopts ALJ Pelios’ finding based on the reasons stated in the decision.

**PROCEDURAL HISTORY**

On July 16, 2013, Petitioner filed a petition with the Board requesting a formal hearing related to a billing dispute with Respondent for utility services Respondent provided to Petitioner. Petitioner complained that Respondent failed to diagnose gas leaks, which resulted in Respondent overcharging Petitioner over the course of approximately sixteen (16) years.

Respondent filed its answer on August 27, 2013. Respondent defended the accuracy of Petitioner’s meter and the amount charged to Petitioner. Respondent also disputed Petitioner’s claim that she had complained about high gas bills for years.

On September 16, 2013, the Board transferred the matter to the Office of Administrative Law (“OAL”) as a contested case. On August 27, 2014, a hearing was held before ALJ Pelios.

At the evidentiary hearing, Petitioner appeared pro se but with the assistance of a friend, Richard Knauer. Knauer argued generally, on behalf of Petitioner, that Respondent was negligent in failing to diagnose the gas leak.

The parties stipulated that Petitioner’s meter was tested on April 26, 2012, in the presence of the Board and it tested accurate, within the Board’s regulations. The parties also stipulated that on April 23, 2012, Respondent discovered a leak on the customer’s interior fuel line, not on Respondent’s equipment.

Eileen Mayfield, Credit and Collection Supervisor for Respondent, testified on behalf of Respondent. Mayfield testified that Petitioner’s meter went into service on March 11, 1988, and was removed on April 23, 2012, pursuant to a work order for a meter exchange because of high bills.

Given that the gas leak was stipulated to, Mayfield explained that a customer may detect a gas leak where there is an odor or where there is constantly significantly higher usage every month for as long as the leak is present. Mayfield testified that it is Respondent’s obligation to respond to a home when there is a gas leak or potential gas leak. Mayfield further testified that Respondent does not post people in individual homes to ensure gas is not leaking. However, Respondent conducts walking surveys on a monthly basis, whereby a representative walks the service lines of meters to check for smells or signs of gas leaks.

Mayfield described Petitioner’s billing related phone calls as non-existent prior to the March 26, 2012 phone call Respondent received from Petitioner, requesting that Mayfield speak with Knauer regarding Petitioner’s high bills. Knauer had made an application for an exchange of meter to be witnessed by the Board.

Mayfield testified as to the comparison of average daily use per degree-day for the winter seasons from November 2011 through April 2012, November 2012 through April 2013, and November 2013 through April of 2014. Mayfield explained that the winter usage in 2011-2012 of 0.5222 was higher than the winter usage in 2012-2013 of 0.4947 because it was slightly warmer in 2012-2013. The last winter, 2013-2014, was the highest at 0.536, because it was a cold winter. Mayfield testified Petitioner’s usage was consistent in the heating seasons before and after the meter exchange.

Knauer testified on behalf of Petitioner. Knauer explained that the Home Energy Reports showed that Petitioner paid more than her neighbors: one-hundred and twenty-nine (129) percent more from February 23, 2011 to March 22, 2011; one-hundred and forty-three (143) percent more from November 19, 2011 to December 21, 2011; one-hundred and forty-four (144) percent more from December 22, 2011 to January 26, 2012; and one-hundred and thirty-four (134) percent more from August 24, 2012 to September 21, 2013. Knauer explained his own calculations of the annual leak amount based on an estimate of the size of the gas pipe and the presumption that the leak was constant. Knauer argued that although Petitioner did not request an inspection, Respondent was negligent in failing to conduct an inspection.

Petitioner also testified on her own behalf. Petitioner testified that she called Respondent many times, but had no documentation of the alleged phone calls.

Following the conclusion of the hearing, ALJ Pelios closed the record. On July 10, 2015, ALJ Pelios issued an Initial Decision. In the Initial Decision, ALJ Pelios found Respondent replaced Petitioner's gas meter and tested the previous meter, and the previous meter tested as accurate. ALJ Pelios also found that Respondent discovered a leak in Petitioner's interior seal line when conducting the exchange and the leak was repaired by Petitioner's plumber.

ALJ Pelios also found that more weight should be given to the analysis performed by Mayfield, which was supported by documentation, than Knauer's calculations, which were admittedly not based on any industry accepted practice and reflected his own efforts to account for the bills. Thus, ALJ Pelios found Petitioner's gas usage after the meter replacement and leak repair was consistent with her usage prior to the exchange and repair. ALJ Pelios found that Petitioner did not produce any evidence establishing that any phone calls to Respondent went unanswered, and that Respondent provided testimony and evidence noting conversations that occurred.

ALJ Pelios concluded that any gas consumed by passing through the meter and lost to the leak after the "point of delivery" was the responsibility of Petitioner, not Respondent. ALJ Pelios also concluded that to the extent Petitioner's bill reflected gas usage that included gas lost to leak after the "point of delivery", such does not constitute overbilling. Further, ALJ Pelios concluded the meter reflected an accurate measurement of the gas consumed beyond the "point of delivery" by Petitioner.

Accordingly, ALJ Pelios concluded Petitioner's petition must be dismissed for failure to meet the burden of proof on the disputed issue of entitlement to any further relief from Respondent. No exceptions to the Initial Decision have been submitted by Petitioner.

## **DISCUSSION AND FINDINGS**

Initially, the Board notes that Knauer acted in a representative capacity and provided testimony. Pursuant to N.J.A.C. 1:1-5.4, a party may represent him or herself, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, may be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule 1:21-1(e). N.J.A.C. 1:1-5.4(a) allows for non-attorneys to represent individuals before the OAL under limited circumstances. In this case, the record does not contain any evidence that Knauer, a non-lawyer, had standing to represent Petitioner, the customer of record under N.J.A.C. 14:3-1.1, or that he fit the criteria for non-lawyer representation. Notwithstanding, the Board notes that Petitioner requested that Knauer be permitted to participate (P-9) and Respondent granted consent in a letter dated November 11, 2013<sup>1</sup> and at the hearing. (T4:18 to T5:16)<sup>2</sup> Moreover, the Board is satisfied that there is sufficient, credible evidence within the record to support the ultimate disposition and does not discern any prejudice with the potential to affect the Board's final decision.

Based upon the testimony and evidence presented, and the Board's review of the entire record, the Board **HEREBY FINDS** the findings and conclusions of the ALJ to be reasonable. In customer billing disputes before the Board, Petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Here, Petitioner failed to present any evidence that showed Respondent's billing was inaccurate.

---

<sup>1</sup> In its letter, NJNG also stated that it did not object to Knauer's participation but noted that Knauer could speak only on issues for which he has first-hand knowledge and he could not provide technical or expert testimony unless he was so qualified.

<sup>2</sup> "T" refers to the transcript of August 24, 2014 hearing.

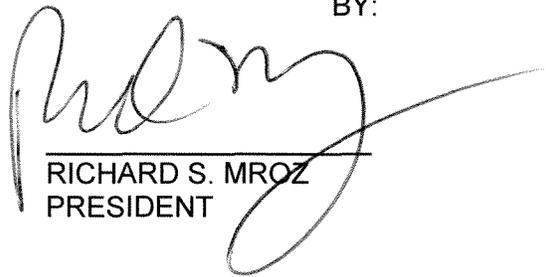
ALJ Pelios reasonably concluded that to the extent Petitioner's bill reflected gas usage that included gas lost to leak, such did not constitute overbilling, and, therefore, Petitioner was not entitled to further relief from Respondent. ALJ Pelios found Respondent replaced Petitioner's gas meter and tested the previous meter, and the previous meter tested as accurate. ALJ Pelios reasonably concluded that Petitioner's gas usage after the meter replacement and leak repair was consistent with her usage prior to the exchange and repair. ALJ Pelios found that any gas consumed by passing through the meter and lost to the leak after the "point of delivery" was the responsibility of Petitioner, not Respondent. Lastly, ALJ Pelios also found that there was no evidence that Respondent did not respond to Petitioner's inquiries.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be **HEREBY DISMISSED**.

The effective date of this Order is August 29, 2015.

DATED: 8/19/15

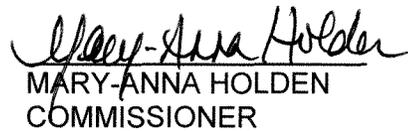
BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



JOSEPH L. FIORDALISO  
COMMISSIONER



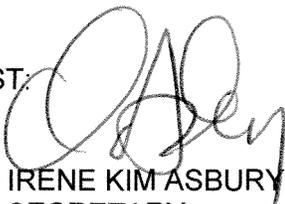
MARY-ANNA HOLDEN  
COMMISSIONER



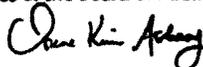
DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



DIANNE ARGILA

v.

NEW JERSEY NATURAL GAS

BPU DOCKET NO. GC13070636U

OAL DOCKET NO. PUC 13471-13

SERVICE LIST

Dianne Argila  
647 McCormick Dr.  
Toms River, NJ 08753

Eileen F. Quinn, Esq.  
Assistant General Counsel  
New Jersey Natural Gas  
1415 Wyckoff Road  
Post Office Box 1464  
Wall, NJ 07719

Irene Kim Asbury, Esq.  
Secretary of the Board  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Eric Hartsfield, Director  
Division of Customer Assistance  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Christopher Psihoules, DAG  
Ashton DiDonato, DAG  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029



RECEIVED

State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

JUL 13 2015

BOARD OF PUBLIC UTILITIES  
MAIL ROOM

INITIAL DECISION

OAL DKT. NO. PUC 13471-13

AGENCY DKT. NO. GC13070636U

**DIANNE ARGILA,**

Petitioner,

v.

**NEW JERSEY NATURAL GAS COMPANY,**

Respondent.

JUL 13 2015

*Case management*

**Dianne Argila**, petitioner, appearing pro se

**Eileen F. Quinn, Esq.**, appearing on behalf of New Jersey Natural  
Gas Company

Record Closed: August 27, 2014

Decided: July 10, 2015

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Dianne Argila (petitioner) alleges that New Jersey Natural Gas (NJNG or respondent) overcharged her for gas service over the sixteen-year period preceding her petition due to an undetected leak. NJNG argues that petitioner's meter tested accurate and that measured usage after the leak was detected and fixed was consistent with usage prior to that event. Petitioner filed her petition with the Board of Public Utilities on

*CMS*  
*v. Haynes*  
*D. Lee Thomas*  
*E. Hartsfield*  
*J. Ford*  
*R. Lambert*  
*C. Jordan*  
*J. Coertsman*  
*E. Bestow*  
*C. Vachier*

July 16, 2013. Respondent filed an answer on August 27, 2013. The matter was transferred to the Office of Administrative Law (OAL) for hearing as a contested case on September 20, 2013. The matter was scheduled and a hearing was held on August 27, 2014, 2014. The record closed on that date. Orders were entered in this matter to allow for the extension of time in which to file the initial decision.

### **FACTUAL DISCUSSION AND FINDINGS**

Many facts in this matter are not in dispute. Petitioner resides at 647 McCormick Drive in Toms River, New Jersey. She is supplied natural gas service by NJNG. A meter measuring natural gas usage was placed in service at the property in March of 1998. It remained in service until it was removed at customer's request for testing and replaced with a new meter on April 26, 2012. The meter tested accurate in the presence of a representative of the New Jersey Board of Public Utilities (BPU). On April 23, 2012, a gas leak was discovered by NJNG on petitioner's interior seal line. The leak was repaired by petitioner's plumber.

Petitioner asserts that the discovery of the leak is evidence that petitioner was overcharged for gas service for the previous sixteen years. Respondent argues that the leak was on the interior seal line and therefore the responsibility of the petitioner, and that an analysis of petitioner's usage is consistent both before and after the discovery and repair of the leak. Petitioner responds that if there was one leak there may be others and believes an analysis of usage supports her position.

The preceding statements are not in dispute and are hereby **FOUND** as **FACT**.

Eileen Mayfield testified on behalf of respondent regarding petitioner's customer records with NJNG, NJNG's procedures for customer complaints and the testing of the meter. She is employed by respondent as the credit and collections supervisor and has been employed by NJNG for twenty-three years. She described that the meter at the premises went into service on March 11, 1988 and was removed on April 23, 2012, pursuant to a service order to have the meter tested. It was pursuant to this meter removal that the leak in petitioner's interior seal line was discovered.

Mayfield described petitioner's history of service related phone calls and her high billing complaint, which led to the meter exchange and test. After the meter was tested accurate, petitioner was not satisfied so respondent undertook a high bill investigation as an additional step to analyze petitioner's account. She described a usage comparison of petitioner's service for the heating seasons November of 2011 through April of 2012, November of 2012 through April of 2013, and November of 2013 through April of 2014. Of these three heating seasons, the first was prior to the meter replacement and leak repair and the other two were after that occurred. She noted that the average daily usage prior to the meter exchange and leak repair was .5222 per degree-day, a form of measurement which takes into account differences in temperature year over year. After the repair her average daily usage per degree-day was .4947 and .536, respectively. Although the usage appeared to drop slightly after the repair and then ticked upward in the subsequent year to its highest measure, Mayfield defined the usage as consistent and similar both before and after the meter reading and leak repairs.

Petitioner testified on her own behalf. She stated that she has high gas bills, which she could not pay for and has been placed on a budget plan. She has called NJNG many times to complain about her bill. She would not complain if she did not feel the bills were outrageous.

Richard Knauer testified on behalf of petitioner. He is a friend of petitioner who has helped her with many matters involving the house. He presented the bulk of the case on petitioner's behalf. He described becoming aware that petitioner's bills were high and pointed to the home energy reports (P-3 through P-6) which demonstrate 129%, 143%, 144% and 113% more usage than her neighbors do for the covered time periods, respectively.

Mr. Knauer presented a document memorializing calculations he performed to attempt to account for how much gas was lost attributing to the leak discovered in petitioner's line (P-1). He asserts these calculations tend toward a conclusion that 1,752 centum cubic feet (CCF) was lost annually to the leak. On cross-examination, he acknowledged that his calculations were not based upon any acceptable gas industry

practice but rather reflects his self-initiated efforts to account for what he and petitioner believed were excessive bills and meter readings, accounting for the gas leak once they became aware of its existence.

Based on the testimony and documentary evidence provided, I **FIND** that respondent did provide a replacement of petitioner's gas meter and a testing of the previous meter, and that the meter tested as accurate. I further **FIND** that respondent discovered a leak in petitioner's interior seal line when conducting the exchange. I further **FIND** that the leak was repaired by petitioner's plumber.

Given that Mayfield's analysis was supported by documentation and an explanation as to how it was performed, the factors it took into account and the industry practice, and given that Mr. Knauer's own calculations were admittedly not based in any industry accepted practice and reflect his own efforts to account for the bills, I **FIND** that more weight should be given to the analysis performed by Ms. Mayfield, and therefore **FIND** that petitioner's gas usage after the meter replacement and leak repair was consistent with her usage prior to the exchange and repair.

To the extent that the petition in this matter makes reference to unresponsiveness by NJNG to phone calls from petitioner and/or Mr. Knauer, I **FIND** that petitioner has not produced any evidence establishing that any phone calls to the respondent went unanswered, and that respondent did provide testimony and evidence noting conversations that did occur.

### **LEGAL ANALYSIS AND CONCLUSIONS**

N.J.A.C. 14:3-1.3(a) provides that "each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the [BPU] for approval[.]" The tariff shall "clearly describe . . . all terms and conditions regarding the services[.]" N.J.A.C. 13:3-1.3(b)2. A utility is expected to operate in accordance with its tariff, N.J.A.C. 13:3-1.3(d), though any inconsistency between a tariff and the governing regulations is resolved in favor of the regulation, unless the tariff "provides for more favorable treatment of customers." N.J.A.C. 13:3-1.3(i). In other words, a tariff is

essentially the law governing the relationship between a public utility and its customers, and is binding upon those parties. Application of Saddle River, 71 N.J. 14 (1976).

The tariff governing the relationship between respondent and its customers defines "point of delivery" as "that point where the Company delivers metered gas (outlet of Company gas meter) to the Customer's installation unless otherwise specified in the service agreement. The gas supplied by Company becomes the property of the Customer at the Point of Delivery." It further defines "Customer Equipment" as "all appliances, piping, vents, connectors, valves, fittings or any other gas utilization or distribution equipment at or on the Customer's side of the Point of Delivery and includes equipment leased by the Customer from third parties."

Section 7.5 of the tariff provides, in pertinent part, that:

The Company shall not be liable for damages to the Customer Equipment or for injuries sustained by the Customer or others, due to the condition or character of the Customer Equipment. The Company shall not be responsible for the use, care or handling of the gas delivered to the Customer after it passes beyond the point at which the Company's service facilities connect to the Customer Equipment.

The Company may, but need not, conduct a limited inspection of the appliances, venting system and leak integrity of the Customer's piping and venting downstream of the Point of Delivery as a courtesy to the Customer at the time of the initiation of service or thereafter at the request of the Customer. In no event, however, shall the Company have any duty to inspect Customer Equipment or be responsible for any failure of the Customer Equipment or any harm arising from the operation of the Customer Equipment, even if, the Company undertakes, as a courtesy to the Customer, to conduct a limited inspection at the time of initiation of service or otherwise. The Customer shall, at all times, be solely responsible for the inspection, integrity and safety of all Customer Equipment.

In the present matter, it is not in dispute, indeed the parties have stipulated, that a gas leak was found in the petitioner's interior seal line, which is beyond what is defined by the tariff as the "point of delivery." Accordingly, the leak occurred in what is defined by the tariff as "customer equipment" and as such, I **CONCLUDE** that any gas consumed by passing through the meter and lost to the leak after that point is the responsibility of the petitioner, not the respondent, as provided by section 7.5 of the

tariff. I further **CONCLUDE** that to the extent that petitioner's bill from respondent reflects gas usage which includes gas lost to leak after the point of delivery, such does not constitute of an overbilling, pursuant to the tariff.

To the extent that petitioner argues that any such leak must have existed for years or that the existence of one leak makes it just as or even more likely that another leak exists, it is noted that 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 justiciable 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.) cert. denied, 31 N.J. 75 (1959).

In the present matter, petitioner has not met her burden of proof in showing that other leaks exist or that the repaired leak existed for a significant period of time. Beyond the fact that any such leaks would be responsibility of the petitioner, as outlined above and despite the fact that respondent does not bear the burden of proof in this matter, it is noted that the record reflects that respondent did provided substantial credible evidence that petitioner's usage was similar in volume before and after the discovery and repair of the gas leak, and that a leak of significant proportion would be noticeable to those in or near the premises.

It is also noted that the parties stipulated to the fact that the previous meter tested as accurate. Pursuant to Section 8.1 of the tariff, "The quantities of service delivered to the Customer as recorded by the Company's meter or meters, subject to any necessary adjustments for pressure and temperature in accordance with Section 3.1 of this Tariff, shall be final and conclusive except when the metering equipment fails to register or is determined to be in error." Furthermore, N.J.A.C. 14:3-4.5(a) provides that "Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months[,]" and N.J.A.C. 14:3-4.6(a) provides that "Whenever a meter is found to be registering fast by more than two percent, or in the case of water

meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than one-hundred percent of the service provided. . . .” Accordingly, I **CONCLUDE** that the meter in service at the subject property reflects an accurate measurement of the gas consumed beyond the point of delivery by petitioner.

Finally, Section 7.5 of the tariff further provides that “The Company shall not be liable for any claim for damages resulting from the supply, use, care or handling of the gas or from the presence or operation of the Company’s structures, equipment, pipes, or devices, except for general or direct damages that follow from the Company's negligence, recklessness, or willful misconduct.” Based on the forgoing, I **CONCLUDE** that petitioner has failed to demonstrate, by a preponderance of credible evidence, that they have suffered any damage or are entitled to a claim that is the the result of respondent's negligence, recklessness or willful misconduct. Accordingly, I finally **CONCLUDE** that petitioner’s appeal must be dismissed.

### **ORDER**

It is hereby **ORDERED** that the petition be **DISMISSED** for the failure of the petitioner to meet the burden of proof on the disputed issue of entitlement to any further relief from respondent.

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.

July 10, 2015  
DATE

  
\_\_\_\_\_  
ELIA A. PELIOS, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

EAP/mel

**WITNESSES**

For Petitioner:

Dianne Argila  
Richard Knauer

For Respondent:

Eileen Mayfield

**EXHIBITS**

For Petitioner:

- P-1 Gas Leakage Calculations
- P-2 Letter from respondent to petitioner dated June 28, 2012
- P-3 Home Energy Report February 23, 2011 to March 24, 2011
- P-4 Home Energy Report November 19, 2011 to December 21, 2011
- P-5 Home Energy Report December 22, 2011 to January 26, 2012
- P-6 Home Energy Report February 23, 2011 to March 24, 2011
- P-7 "Natural Gas Odor and Safety Information"
- P-8 "Don't Rely on Just Your Nose"
- P-9 Letter from Petitioner to Administrative Law Judge

For Respondent:

- R-1 Hearing Packet