



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

OTTAVIO CINELLI,)	ORDER OF EXTENSION
Petitioner)	
)	
v.)	
)	
SOUTH JERSEY GAS COMPANY,)	BPU DOCKET NO. GC19050637U
Respondent)	OAL DOCKET NO. PUC 09483-19


(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on December 16, 2020; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on January 30 2021. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

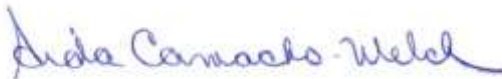
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until March 15, 2021.

DATED: January 27, 2021

BOARD OF PUBLIC UTILITIES
BY:¹



JOSEPH L. FIORDALISO
PRESIDENT

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

¹ Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 1-27-2021

cc: Service List Attached

DATED: 1/28/2021

Ellen S. Bass,



_____, ACTING
DIRECTOR AND CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 1/28/2021

Date Board mailed executed Order to Parties: 1-28-2021

OTTAVIO CINELLI, PETITIONER

V.

SOUTH JERSEY GAS COMPANY, RESPONDENT

**BPU DOCKET NO. GC19050637U
OAL DOCKET NO. PUC 09483-19**

SERVICE LIST

Ottavio Cinelli
[REDACTED]
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 09483-19

AGENCY DKT NO. GC19050637U

OTTAVIO CINELLI,

Petitioner,

v.

SOUTH JERSEY GAS

COMPANY,

Respondent.

Ottavio Cinelli, petitioner, pro se

Van L. McPherson, III, Esq., for respondent South Jersey Gas Company

Record Closed: September 10, 2020

Decided: December 16, 2020

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner Ottavio Cinelli (Cinelli) filed a billing dispute against South Jersey Gas Company (SJG) with the Board of Public Utilities (Board or BPU). SJG supplied natural gas service to Cinelli's home in [REDACTED], New Jersey. In June 2017, Cinelli moved to [REDACTED] New Jersey. Cinelli submits that his assistant notified SJG to discontinue service to [REDACTED] New Jersey and transfer service to his new address in [REDACTED]. Instead, SJG continued to bill both residences until service was shutoff to the [REDACTED] property on July 26, 2018, due to non-

payment. Cinelli maintains that he is not responsible for service charges to the [REDACTED] property.

PROCEDURAL HISTORY

After Cinelli requested a fair hearing, the PUC transmitted the matter to the Office of Administrative Law (OAL) where it was filed on July 16, 2019, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. After an initial telephone conference, the parties participated in an in-person settlement conference on September 6, 2019. The matter did not settle. Due to petitioner's health issues subsequent hearing dates were adjourned. After the closures caused by the COVID 19 pandemic, a zoom hearing was scheduled for July 16, 2020, but was converted to a status conference. During the conference, the parties elected to proceed by summary decision and a briefing schedule was established. All submissions were due by September 10, 2020, and the record closed that day.

ISSUE

The only issue in this matter is whether Cinelli effectively disconnected service to his property located at [REDACTED], New Jersey ([REDACTED] property) when he added service to [REDACTED], New Jersey ([REDACTED] property).

SUMMARY OF RELEVANT FACTS

The record in this matter included unrefuted business records from SJG, including billing statements from June 2017 through May 3, 2019, copies of checks making payment on Cinelli's account, and recordings from customer service telephone conversations on this account, and a written statement from Cinelli. After considering the evidence presented, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Cinelli had an account with SJG for his [REDACTED] property, under account number [REDACTED]. After July 2017 that account also included charges for Cinelli's [REDACTED] residence. SJG provided business records which included recorded telephone conversations regarding Cinelli's account. I listened to a recorded telephone call, dated June 29, 2017, at 5:48 p.m. from a female who identified herself as "Tavi Cinelli" to a SJG customer services representative identified as Barbara. (SJG Exhibit A.) During the June 29, 2017, telephone call Tavi Cinelli, responded correctly to the security questions associated with the account, including the last four digits of Cinelli's social security number, his telephone number, and his email address. Id. Tavi Cinelli informed the customer service representative that she needed immediate service for a new address in [REDACTED] because they were moving. Id. The SJG representative asked if she wanted service to the [REDACTED] property discontinued and the caller, Tavi Cinelli, said "no." Id. SJG's representative asked Tavi Cinelli if she wanted to use the same account number for both properties and Tavi Cinelli responded "that would be good." Id.

In Cinelli's statement, dated August 6, 2020, Cinelli confirmed that in June 2017, his "assistant called South Jersey Gas to alert them of my move" and "to provide gas service to my new property."

Cinelli is president of TC Land Development LLC. Checks drawn from a TC Land Development Company, LLC account were used to make payments to SJG. (SJG Exhibit C.) Among the checks produced by SJG were a check, dated April 14, 2017, for \$200 and a check, dated May 17, 2017, for \$66.10. Id. This practice of using business account checks to pay SJG continued after the June 28, 2017, telephone call advising of the move to [REDACTED]. The September 2017, bill listing charges for the [REDACTED] property and the [REDACTED] property reflected a payment received of \$52 drawn on a T.C. Land Development, LLC check, dated August 20, 2017. (SJG Exhibits B and C.) The November 2017, statement reflecting service at both properties listed a payment of \$27.53 drawn on a TC Land Development Company, LLC check. Id. Similarly, the December 2017, statement showed a \$47 payment received by company check. Id. The January 2018, statement for both properties showed a payment received of \$193.50 paid by two separate company checks. Id. There was a company check issued on November 20, 2017, for \$103.47 and a company check issued on December 19, 2017, for \$90.03.

(SJG Exhibit C.) All the company checks bear the same signature and Cinelli did not dispute the authenticity of any of these checks.

SJG also provided a recording of a telephone call made on January 19, 2018, at 7:29 p.m. from a male, who identified himself as last name Cinelli, first name Ottavio. (SJG Exhibit D.) The caller, Cinelli, gave the [REDACTED] property address and the correct account number. Id. As with the June 28, 2017, telephone call, the caller was able to accurately answer all security questions including the last four digits of Cinelli's social security number. Id. The purpose of the telephone call was to question the January 2018, bill because it was significantly higher than previous bills. The call was cordial and the caller, Cinelli, never asked to have the service to the [REDACTED] property discontinued.

SJG continued to send the statement to the [REDACTED] address each month showing charges for both properties. (SJG Exhibit B.) The next recorded customer service telephone call was received on July 31, 2018, from a female, who identified herself as Joann Cinelli. (SJG Exhibit E.) When asked to provide the last four digits of her social security account, she gave the representative Cinelli's social security number. There was confusion because Joann Cinelli was listed as an additional account holder and the representative was looking for her own social security number. Joann Cinelli confirmed her correct social security number and the telephone call proceeded. The statements provided by SJG list Joann Cinelli as an additional account holder. (SJG Exhibit B.) The purpose of Joann Cinelli's telephone call was to advise SJG that the people living in the [REDACTED] property had moved out and she wanted to make sure the gas had been turned off. The customer service representative informed her that service was discontinued on July 26, 2018, due to non-payment on the account. The representative also advised Joann Cinelli that the account was still under the name of Ottavio Cinelli. (SJG Exhibit E.)

SJG provided a recorded telephone call from January 17, 2019, from a female, who identified herself as Ottavio Cinelli, questioning the outstanding SJG charges of \$3,039.31. (SJG Exhibit F.) She requested SJG statements from July 2017, to January 2019. SJG mailed the statements on January 18, 2019. Id.

In his defense, Cinelli stated that he had not received a bill from SJG mailed to his [REDACTED] address until January 2019. He did not realize that he had not paid the minimal gas usage for the [REDACTED] residence, so he immediately paid those charges of approximately \$200. He blamed SJG for lack of contact when the [REDACTED] bill grew and remained outstanding. Cinelli further claimed he had no responsibility for paying the bill attributed to gas usage at the [REDACTED] property because he advised SJG he was moving and SJG never alerted him to the growing charges against the [REDACTED] property.

LEGAL ANALYSIS AND CONCLUSION

Summary Decision

Summary Decision may be rendered in an administrative proceeding if the pleadings, discovery, and affidavits “show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). The standard to be applied in deciding a motion pursuant to N.J.A.C. 1:1-12.5(b) is essentially the same as that governing a motion under R. 4:46-2 for summary judgment in civil litigation. Contini v. Bd. of Educ. of Newark, 286 N.J. Super 106, 121, (App. Div. 1995), certif. denied, 145 N.J. 372 (1996.)

A court should grant summary judgment when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-529 (1995). The Supreme Court of New Jersey has adopted a standard that requires judges to “engage in an analytical process to decide whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533.

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that 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 tendered 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.)

In this matter, Cinelli put forth no proof that would create a genuine issue of fact in support of his position that the [REDACTED] SJG charges were not his responsibility. Further, the submissions are so one-sided that summary decision must be granted as a matter of law.

The jurisdiction of the OAL to hear and decide contested cases such as this is derived from the BPU, which is responsible for deciding billing disputes. See, Wood v. Dept. of Community Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990), citing N.J.S.A. 52:14B-1 to -15. (See also, Harjani v. Atlantic City Elec. Co., OAL Docket No. PUC 9396-13, 2013 N.J. AGEN LEXIS 498. Final Decision (February 19, 2014).) In deciding such cases, the parties are bound by the Rules and Regulations adopted by the Board of Public Utilities since they have the force and effect of law.

The regulations applicable to this case are the following:

N.J.A.C. 14:3-1.1 Definitions provides:

"Customer of record" means the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein.

N.J.A.C. 14:3-7.1 Billing general provisions provides:

(a) The customer(s) of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

Based upon the above provisions and the record, Cinelli, as the customer of record, is responsible for payment for all gas service rendered to the [REDACTED] property. Further, from the June 28, 2017, telephone request to add the [REDACTED] property, Cinelli took no steps or action to disconnect gas service to the [REDACTED] premises or otherwise terminate their status as "customer of record" until the telephone call of July 31, 2018.

The first request to disconnect service to the [REDACTED] property was from Joann Cinelli, an additional account holder, on July 31, 2018. During that recorded telephone call, Joann Cinelli advised SJG that the people who were living there had moved out and she wanted to make sure service was disconnected. By that time, service had been disconnected due to the large outstanding balance. The business records of SJG consisting of recorded telephone conversations, billing statements, and checks drawn on Cinelli's company account all support Cinelli's responsibility as the customer of record for the outstanding bill on the [REDACTED] property. As the customer of record, during the above period of time, Cinelli is responsible for payment for all gas service rendered pursuant to N.J.A.C. 14:3-7.1.

I **CONCLUDE** that Cinelli presented no evidence to demonstrate that the billing statements that included charges for the [REDACTED] gas usage from July 2017, through the shut-off for non-payment in July 2018, were not his responsibility. Based on the foregoing, I **CONCLUDE** that Cinelli failed to satisfy his burden by a preponderance of the evidence.

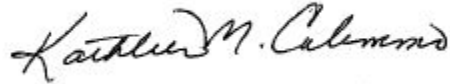
ORDER

The motion for summary decision file by respondent SJG is **GRANTED**. For the reasons cited above, I **CONCLUDE** and hereby **ORDER** that the appeal be **DISMISSED**.

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.



December 16, 2020
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

APPENDIX

LIST OF EXHIBITS

For petitioner:

P-1 Statement of August 6, 2019

For respondent:

SJG Exhibit A – Recorded telephone call, dated June 29, 2017

SJG Exhibit B – Billing statements from June 2017, until January 2019

SJG Exhibit C – Checks making payments on account

SJG Exhibit D – Recorded telephone call, dated January 24, 2018

SJG Exhibit E - Recorded telephone call dated July 31, 2018

SJG Exhibit F - Recorded telephone call, dated January 17, 2019

SJG Exhibit G - Recorded telephone call, dated January 31, 2019