



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

<b>DAWN MACRILLO</b>	)	ORDER ADOPTING
Petitioner,	)	INITIAL DECISION
	)	
v.	)	
	)	
<b>SOUTH JERSEY GAS COMPANY,</b>	)	Docket No. GC18080939U
Respondent.	)	OAL Docket No. PUC 10786-19

**Parties of Record:**

**Dawn Macrillo**, Petitioner, *pro se*  
**Van L. McPherson, III, Esq.**, for Respondent, South Jersey Gas Company

BY THE BOARD:

This matter is a billing dispute between Dawn Macrillo (“Petitioner”) and South Jersey Gas Company (“SJG” or “Respondent”). This Order sets forth the procedural history and factual background of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10(c). Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on October 29, 2020 (“ID”) as follows.

**PROCEDURAL HISTORY**

On or about August 21, 2018, Petitioner filed a Petition with the Board requesting a formal hearing to help resolve the billing dispute between her and SJG. On or about September 4, 2018, SJG filed an Answer to the Petition. On August 7, 2019, the matter was transmitted to the Office of Administrative Law (“OAL”) for a 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. The matter was assigned to Administrative Law Judge John S. Kennedy (“Judge Kennedy”).

An evidentiary hearing was held on February 21, 2020. The record remained open until March 6, 2020 to allow SJG to provide copies of bills from April 2017 through October 2018. On October 29, 2020, Judge Kennedy issued his Initial Decision in favor of Respondent, denying the relief sought by Petitioner and dismissing the Petition. The Initial Decision was transmitted electronically to the Board. No exceptions were filed.

Despite receipt of the Initial Decision in October, due to conditions relating to the Public Health Emergency, the Board's receipt and review of the exhibits in the record, which were transmitted only in hard copy, was substantially delayed. Pursuant to Executive Order 127, signed by Governor Murphy on April 14, 2020, any final decision due anytime from March 9, 2020 (when the Governor declared a Public Health Emergency) until thirty days after the end of the emergency was given an automatic extension equivalent to "the number of days of the Public Health Emergency...plus an additional 90 days." Notwithstanding the continued existence of the Public Health Emergency, by Order dated December 2, 2020, the Board obtained a forty-five day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18. Thereafter, the Board relied upon the extension set forth in Executive Order 127 to await receipt of the complete record and enable appropriate review of the same pursuant to N.J.S.A. 52:14B-10(c).<sup>1</sup>

### **EVIDENTIARY HEARING**

At the evidentiary hearing on February 21, 2020, the Petitioner testified on behalf of herself. Sarah Miller ("Miller"), a Customer Service Supervisor with SJG, testified on behalf of SJG.

Petitioner has lived at her current residence since at least 2012. [1T.<sup>2</sup> Between 2012 and 2014, Petitioner's gas meter was blocked by a hatch in her deck. [1T.15:16-16:7]. In August 2014, there was an inaccurate reading of Petitioner's meter and she was incorrectly billed. [1T.16:8-17:2]. SJG went back to the property and discovered that the meter was not registering. Id. The meter was replaced in April 2016. [SJG-1; 1T.57:6-58:17].<sup>3</sup> The amount calculated for the non-registering period totaled \$2,401.03, representing 1,864 cubic feet of gas for eighteen months from August 1, 2014 to January 30, 2016. [SJG-1].

Miller testified that in August 2016, SJG contacted Petitioner by telephone after the meter was exchanged. [1T.17:17-27:18]. That conversation was recorded and played into evidence at the hearing. Id. During that call, Petitioner was advised that her meter was not registering and that an adjustment might need to be made. Id. During the time period when the meter was not registering, SJG only billed Petitioner the minimum service charge and not for gas usage. [1T.28:12-29:19]. SJG outlined both Heat Sensitive Use Factors and Non-Heat Use Factors used to determine the gas usage for the non-registering period. [SJG-1].

On November 4, 2019, Petitioner was billed \$4,141.78 for past due service. [SJG-2]. This amount included the disputed charges of \$2,401.03 relating to the non-registering period from August 1, 2014 to January 30, 2016. [1T.46:19-47:6]. Petitioner's gas was shut off at times in the past two years for failure to pay the balance of the charges that were not disputed. [1T.28:12-36:12]. SJG-2 includes all corrected bills from October 2018 until November 2019. [1T.53:7-53:10.] The corrected bills for the period between April 2017 and October 2018 were submitted on February 24, 2020, and marked as SJG-3. [ID at 6].

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<sup>1</sup> The Public Health Emergency was extended by Governor Murphy in Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200 and 210 (2020), and Executive Order Nos. 215, 222, 231, 235 and 240 (2021). The Public Health Emergency was terminated by Governor Murphy on June 4, 2021 pursuant to Executive Order 244. Copies of the executive orders referenced in this Order are available online at <https://nj.gov/infobank/eo/056murphy/>.

<sup>2</sup> 1T refers to the transcript of the February 21, 2020 hearing.

<sup>3</sup> Exhibits P-1, SJG-1 and SJG-2 were moved into evidence at the February 21, 2020 hearing. [See 1T.55:17-55:25 and 77:12-77:15]. Exhibit SJG-3 was moved into evidence on February 24, 2020. [ID at 6].

Petitioner testified on her own behalf. When the meter was removed from her property and tested, SJG determined it to be faulty and it was destroyed. [P-1 and 1T.57:6-58:17 and 75:9-76:13]. Petitioner testified that she was never given an opportunity to have the meter tested herself to determine if it was faulty. Id. Petitioner had been disputing her gas bills since 2017, and continually received corrected bills that made it impossible to determine what is actually due. [1T.58:18-64:9]. Petitioner made multiple attempts to obtain all of her gas bills to attempt to determine if the billing was correct. Id. According to her own calculations, Petitioner determined that she should have a credit in the amount of \$801 for 2018, and \$976 for 2019. Ibid. Therefore, Petitioner disputed that she owes \$2,401.03. [1T.64:24-66:16]. Petitioner also disputed all of the charges currently owed, including those charged prior to the \$2,401.03 at issue in the Petition. [1T.58:18-64:9]. Petitioner was advised that Judge Kennedy only retained jurisdiction for the disputed amount of \$2,401.03 as set forth in the Petition. [1T.78:15-79:20].

### **THE INITIAL DECISION**

Judge Kennedy described Petitioner's burden of proof in this matter as a preponderance of the credible evidence. [ID at 6-7 citing Atkinson v. Parsekian, 37 N.J. 143 (1962) and See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959)].

In order to analyze Petitioner's claims of inaccurate meter readings, Judge Kennedy relied upon four regulations. [ID at 6-7]. First, 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. 14:3-1.3(b)(2). A utility is expected to operate in accordance with its tariff, N.J.A.C. 14:3-1.3(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. 14:3-1.3(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, 23 (1976).

Second, pursuant to N.J.A.C. 14:3-6.1(b) each utility company shall keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years. Third, N.J.A.C. 14:5-4.3(a) states:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

Fourth, N.J.A.C. 14:3-4.6(a) states:

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 100 percent of the service provided, except under (d) below.

Upon his review of the testimony on February 21, 2020, and the exhibits entered into evidence at the hearing and thereafter, Judge Kennedy found, *inter alia*, the following facts:

- Meter #0119441, which was removed from the Macrillo's residence, was not registering for the period from August 1, 2014 through April 12, 2016.
- Being less than two percent over or under 100 percent, the meter was not accurate in accordance with the regulation.
- To determine the amount that should have been billed during this time period, SJG factored in weather, using degree days, to determine heat sensitive usage. Non-heat consumption was determined utilizing a summer month when there are no degree days. The amount calculated for the non-registering period totaled \$2,401.03 representing 1,864 cubic feet of gas.
- All of the correct bills were admitted into evidence for the time period in question.
- Macrillo provided no legally competent evidence to support the claim that the bills were inaccurate.

[ID at 6-7]. Judge Kennedy concluded that Petitioner had failed to provide documentation that supported Petitioner's claims, that the amount billed of \$2,401.03 was accurate for the period in question. [ID at 7]. Therefore, Judge Kennedy denied relief to the Petitioner and dismissed the Petition. Id.

### **DISCUSSION AND FINDINGS**

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson, 37 N.J. 143, 149. Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See Loew, 56 N.J. Super. 93, 104.

Pursuant to N.J.A.C. 14:3-6.1(b) each utility company shall keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years. N.J.A.C. 14:5-4.3(a) states:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

N.J.A.C. 14:3-4.6 states in pertinent part:

(a) 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 100 percent of the service provided, except under (d) below.

...

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

2. The meter failed to register at all;

Section 8.13 of SJG's tariff provides that "customer's use of gas will be estimated by company on the basis of available data and charges will be adjusted accordingly."

Here, the meter failed to register at all and SJG provided a calculation of its estimate to Petitioner based upon available data to support its adjustment of the subject charges. [SJG-1]. The Petitioner provided no evidence that suggested the \$2,401.03 billed by SJG was inaccurate.


Thus, after careful review and consideration of the entire record and Judge Kennedy's credibility findings, the Board **HEREBY FINDS** the findings and conclusions of Judge Kennedy to be reasonable, and accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear her burden of proof, by preponderance of the evidence that she was improperly billed.

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

This order shall be effective August 25, 2021.

DATED: 8/18/21

BOARD OF PUBLIC UTILITIES  
BY:  
  
JOSEPH L. FIORDALISO  
PRESIDENT

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

  
ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

**DAWN MACRILLO, PETITIONER**

v.

**SOUTH JERSEY GAS COMPANY, RESPONDENT**

**BPU DOCKET NO.GC18080939U  
OAL DOCKET NO. PUC 10786-19**

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. PUC 10786-19

AGENCY DKT NO. GC18080939U

**DAWN MACRILLO,**

Petitioner,

v.

**SOUTH JERSEY GAS**

**COMPANY,**

Respondent.

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**Dawn Macrillo**, petitioner, pro se

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

Record Closed: March 6, 2020

Decided: October 29, 2020

BEFORE **JOHN S. KENNEDY**, ALJ:

**STATEMENT OF THE CASE**

On August 21, 2018, Dawn Macrillo (hereinafter Macrillo or petitioner) filed a billing dispute against South Jersey Gas Company (hereinafter SJG) with the Board of Public Utilities (hereinafter Board or BPU). SJG supplies natural gas service to the Macrillo's home. Petitioner believes there was an issue with her gas meter, and she alleges that the failure of the meter caused her to be overcharged.

## **PROCEDURAL HISTORY**

The original petition was transmitted to the Office of Administrative Law (OAL) under docket number PUC 15645-18. Petitioner failed to appear at the scheduled hearing and the petition was returned to the Board of Public Utilities. Petitioner requested a second fair hearing, and the matter was transmitted to the OAL under docket number PUC 10786-19 where it was filed on August 7, 2019, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on February 21, 2020. The record remained open until March 6, 2020, to allow SJG to provide copies of bills from April 2017, through October 2018. Pursuant to Executive Order 127 signed by Governor Murphy on April 14, 2020, any decision that was due anytime from March 9, 2020, (when the Governor declared a State of Emergency) until thirty days after the emergency ends, was given an automatic ninety-day extension because of the Covid-19 pandemic.

## **SUMMARY OF RELEVANT FACTS**

The record in this matter includes documentary evidence and the testimony of the individuals who prepared the documents or had knowledge of the matter. After considering the evidence presented, I **FIND** the following to be the relevant and credible **FACTS** in this matter:

Petitioner has lived at her current residence since at least 2012. Between 2012 and 2014, petitioner's gas meter was blocked by a hatch in her deck. In 2014, there was an inaccurate reading of her meter and she was miss-billed. SJG went back to the property and discovered that the meter was not registering. The meter was replaced in April 2016, (SJG-1). The amount calculated for the non-registering period totaled \$2,401.03 representing 1,864 cubic feet of gas for eighteen months from August 1, 2014, to January 30, 2016. Petitioner made multiple attempts to obtain all of her gas bills to attempt to determine if the billing was correct. Up until the date of the hearing, petitioner was still disputing not only the amount charged between 2014 and 2016, but also all of the charges currently owed. Petitioner was advised that this tribunal only retains jurisdiction for the disputed amount as set forth in her petition.



**Sarah Miller** is a Customer Service Supervisor with SJG, and was assigned the petitioner's complaint. Her job is to handle billing disputes and inquiries. Miller testified that in August 2016, SJG contacted petitioner by telephone after the meter was exchanged. That conversation was recorded and played into evidence at the hearing. During that call, petitioner was advised that her meter was not registering and that an adjustment may need to be made. During the time period when the meter was not registering, SJG only billed petitioner the minimum service charge and not for gas usage. In SJG-1, SJG outlined both Heat Sensitive Use Factors and Non-Heat Use Factors used to determine the gas usage for the non-registering period.

On November 4, 2019, petitioner was billed \$4,141.78 for past due service. (SJG-2 pp. 5-7.) This amount included the disputed charges of \$2,401.03 relating to the non-registering period from August 1, 2014, to January 30, 2016. Petitioner's gas was shut off over the past two years for failure to pay the balance of the charges that were not disputed. SJG-2 includes all corrected bills from October 2018, until November 2019. The corrected bills for the period between April 2017, and October 2018, were submitted on February 24, 2020, and marked as SJG-3.

**Dawn Macrillo**, testified on her own behalf. When the meter was removed from her property and tested, SJG determined it to be faulty and it was destroyed. She was never given an opportunity to have the meter tested herself to determine if it was faulty. She has been disputing her gas bills since 2017, and continually receives corrected bills that make it impossible to determine what is actually due. According to her own calculations, petitioner determined that she should have a credit in the amount of \$801 for 2018, and \$976 for 2019. Therefore she is disputing that she owes \$2,401.03.

### **LEGAL ANALYSIS AND CONCLUSION**

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).

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. 14:3-1.3(b)2. A utility is expected to operate in accordance with its tariff, N.J.A.C. 14:3-1.3(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. 14:3-1.3(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, 23 (1976).

Pursuant to N.J.A.C. 14:3-6.1(b) each utility company shall keep a record of each customer's account in a manner that will permit computation of the customer's bill for any billing period occurring within six years.

N.J.A.C. 14:5-4.3(a) states:

No meter that has an error in registration of more than plus or minus two percent shall be placed in service or allowed to remain in service without adjustment.

N.J.A.C. 14:3-4.6(a) states:

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 100 percent of the service provided, except under (d) below.

In this case, meter #0119441, which was removed from the Macrillo's residence, was not registering for the period from August 1, 2014, through April 12, 2016. Being less than two percent over or under 100 percent, the meter was not accurate in accordance with the regulation. To determine the amount that should have been billed during this time period, SJG factored in weather, using degree days, to determine heat sensitive

usage. Non-heat consumption was determined utilizing a summer month when there are no degree days. The amount calculated for the non-registering period totaled \$2,401.03 representing 1,864 cubic feet of gas. All of the correct bills were admitted into evidence for the time period in question. Macrillo provided no legally competent evidence to support the claim that the bills were inaccurate. I therefore **CONCLUDE** that the amount billed for from August 1, 2014, through April 12, 2016, was accurate. I further **CONCLUDE** that petitioner has failed to provide any evidence or credible basis for her claims that her billing was incorrect.

### **ORDER**

All relief sought by petitioner is **DENIED** and the action filed by petitioner is **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.

October 29, 2020  
DATE



\_\_\_\_\_  
**JOHN S. KENNEDY, ALJ**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JSK/dm

**APPENDIX**

**LIST OF WITNESSES**

**For petitioner:**

Dawn Macrillo

**For respondent:**

Sarah Miller

**LIST OF EXHIBITS**

**For petitioner:**

P-1 Invoice for billing month August 2016

**For respondent:**

SJG1 Letter, dated April 27, 2017

SJG2 Corrected bills from October 2018, until November 2019

SJG3 Corrected bills from April 2017, until October 2018