

Date Board mailed Order to OAL: 9-1-2021

cc: Service List Attached

DATED: 9/2/21



ELLEN S. BASS, ACTING DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 9/2/21

Date Board mailed executed Order to Parties: 9/2/21

JULES TONKINSON, PETITIONER

V.

SOUTH JERSEY GAS COMPANY, RESPONDENT

DOCKET NOS. BPU GC20060466U AND OAL PUC 06930-20

SERVICE LIST

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.nj.gov

Terel Klein, DAG
Deputy Attorney General
NJ Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, Post Office Box 112
Trenton, NJ 08625
Terel.klein@law.njoag.gov

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

Julie Ford-Williams, Director
Division of Customer Assistance
Julie.ford@bpu.nj.gov

Karriemah Graham
Supervising Administrative Analyst
Office of Case Management
Karriemah.Graham@bpu.nj.gov



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 06930-20

AGENCY DKT. NO. GC20060466U

JULES TONKINSON,

Petitioner,

v.

SOUTH JERSEY GAS COMPANY,

Respondent.

Jules Tonkinson, petitioner pro se

Van L. McPherson, III, Assistant General Counsel, for respondent (South Jersey Gas Company)

Record Closed: July 7, 2021

Decided: July 26, 2021

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

STATEMENT OF THE CASE

Petitioner, Jules Tonkinson (Tonkinson), filed a billing dispute with the Board of Public Utilities (BPU) appealing the denial by respondent, South Jersey Gas Company (SJG), of his application for gas service at his new residence. Respondent denied the application because of a past due balance owed by Tonkinson at his former residence and maintained that the balance must be paid before service could be provided in his name.

PROCEDURAL HISTORY

Petitioner filed a petition with the BPU on or about June 18, 2020¹. SJG received the petition on July 22, 2020, and advised that it would be filing a motion to dismiss due to the matter having previously been resolved. On July 30, 2020, the BPU transmitted this matter to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13.

On November 18, 2020, SJG filed a motion for summary decision requesting that the matter be dismissed because it was previously resolved by a settlement agreement approved by the Honorable Jeffrey R. Wilson, ALJ, under OAL Docket No. BPU-06918-19. On December 15, 2020, petitioner, Jules Tonkinson (Tonkinson) filed an opposition to the motion disputing the nature of this proceeding as a billing dispute involving his former address of 8 Benner Road. Tonkinson claimed that his appeal stemmed from SJG's refusal to provide service in his name at his new residence located at 27 Aldridge Way. On January 28, 2021, at oral argument, I requested supplemental pleadings addressing the new issues contained in Tonkinson's opposition. Given the dispute as to the nature of this proceeding, I denied SJG's motion by Letter Order, dated April 5, 2021, and scheduled it for a hearing.

The hearing was held on July 2, 2021 via zoom platform by consent of the parties. The record was held open until July 7, 2021, to allow SJG to submit, without objection, the billing statement from the 8 Benner Road address. (R-7.)

FACTUAL DISCUSSION AND FINDINGS

As the following is undisputed, I therefore, **FIND** the following as **FACT**:

¹ The petition attached to the transmittal forwarded to SJG and the Office of Administrative Law was a copy of a request for a hearing, dated March 23, 2019, that had been the subject of a previous petition under OAL Docket No. BPU-06918-19, which was withdrawn due to a settlement agreement.

1. On June 8, 2020, Tonkinson contacted SJG to start service at 27 Aldridge Way, Sewell, New Jersey (Aldridge Way). SJG denied the request due to an outstanding balance at Tonkinson's former residence, 8 Benner Road, Blackwood, New Jersey (Benner Road) in the amount of \$2,225.85.
2. Tonkinson is married to Lisa Leonard. Before moving to Aldridge Way, they resided at Benner Road and had gas service provided by SJG. There was a billing dispute regarding an outstanding balance at the Benner Road property.
3. On April 5, 2019, Tonkinson filed a request for a formal hearing to resolve the billing dispute regarding service to Benner Road. The BPU transmitted the matter to the OAL where it was assigned OAL Docket No. BPU-06918-19. On October 14, 2019, Tonkinson signed a letter acknowledging his acceptance of SJG's settlement offer resolving the matter. By email, dated October 22, 2019, to the Honorable Jeffrey R. Wilson, ALJ, Tonkinson withdrew his appeal stating that the matter had been resolved by a mutually agreeable settlement.
4. In accordance with the settlement agreement, SJG adjusted the account by a credit of \$276.66, leaving an outstanding balance of \$1,033.69. (R-7.) After the settlement agreement, no payments were made on the account. The current balance is \$2,277.93. Id.
5. The balance from Benner Road was still outstanding when Tonkinson requested service in his name at the new Aldridge Way address. SJG refused to provide service in Tonkinson's name at the new address until the outstanding balance from Benner Road was satisfied.

Testimony

Sarah Miller (Miller), is the Program Manager for SJG. She had previously been the Supervisor for Customer Service.

Miller explained that SJG maintains copies of all recorded telephone calls which are saved in its computer system for a three year period. SJG had access to computer notes from earlier recordings, including those from 2015, but could not produce the actual telephone recordings. Miller reviewed the account SJG maintained for Lisa Leonard. The computer notes reflected that on April 9, 2015, Tonkinson called SJG to discuss the account but the representative could not speak with him because he was not listed on the account. After receiving authorization from Lisa Leonard, Tonkinson was added to the account. (R-1.) The customer information for the 8 Benner Road account noted that there were two persons listed on the account with Lisa Leonard as the main customer and Tonkinson listed as "Spouse." His social security number, telephone number, and email address were included with the customer information maintained by SJG. Miller testified that Tonkinson would have had to provide his personal identity information to be added to the account.

Miller stated that before a SJG representative can discuss an account, the caller must provide the last four digits of their social security number for identification and verification purposes. On May 4, 2015, the customer contact log showed that Tonkinson called SJG with questions about his billing statement. (R-1 at 3.) The inputted notes for May 5, 2015, showed that Tonkinson was an authorized representative, who had his own personal identification number. (R-1 at 4.)

Miller also produced a copy of the tax records for 8 Benner Drive to show that Tonkinson and Leonard owned the Benner Drive property from 2015 through 2020 corresponding to the account statements for service. (R-2.)

Miller played a copy of a recorded telephone call from July 24, 2018, wherein Tonkinson told the SJG representative that he was on the account. (R-3.)

Miller also played a copy of a recorded telephone call from Tonkinson to SJG on March 26, 2018. Before the account representative could discuss the account, she confirmed that Tonkinson's name was on the account and she asked him to verify the security questions. Tonkinson provided the last four digits of his social security number and the representative confirmed the information he provided. The purpose of

Tonkinson's call was to discuss a discontinuation of service notice that he received for the Benner Road property. (R-4.)

Miller presented a copy of the settlement offer letter that SJG gave to Tonkinson bearing Tonkinson's signature of acceptance. (R-5.) As reflected in the letter, the settlement pertained to the account at Benner Road and it resolved the appeal that was pending under OAL Docket No. PUC-06918-19. Miller testified that a settlement agreement could only be signed by an account holder. As reflected in this agreement, Tonkinson agreed to pay the balance on the account in full.

When Tonkinson moved to Aldridge Way, he requested gas service in his name. SJG denied his request because of the outstanding balance at his former residence, Benner Drive. Miller stated that SJG's policy does not allow an existing customer to open a new account until all previous accounts are satisfied. The deed for Aldridge Way lists Lisa Leonard Tonkinson as the owner of the property but Tonkinson and their children lived there and Tonkinson wanted the gas service in his name. (R-6.)

On cross-examination, Miller confirmed there was no written documentation from Tonkinson prior to adding him to the account. There were confirming notes from Leonard giving SJG authority to add Tonkinson to the account in May 2015. Telephone recordings are not kept for longer than three years so the telephone call from 2015 was not retained. The computer notes also showed that all Tonkinson's personal identification numbers had been provided to SJG which established his consent to be added as a customer. Tonkinson maintained that none of the billing statements mailed to the residence for Benner Road were in his name. Miller replied that customer statements only contain one name as a general practice.

Tonkinson testified on his own behalf and disputed SJG's authority to deny him service at his new address for his wife's debt at Benner Road. He maintained that he was authorized to speak on Leonard's behalf about the account but he never agreed to be financially responsible for the bill. There was never anything in writing that would hold him responsible for the Benner Road account balance. Tonkinson acknowledged

that he went too far in negotiating a settlement on Leonard's behalf but did not believe that made him responsible for the debt. While he admitted that his signature appeared on the settlement agreement, he claimed he signed it on Leonard's behalf. He claimed that it was disturbing for SJG to hold him financially responsible on a verbal authorization.

On cross-examination, Tonkinson verified that his voice was on the recorded telephone calls with SJG. He admitted that he discussed the account and verified his social security number with SJG representatives. Although he admitted that he executed the settlement agreement with SJG, he now maintains that he lacked authority from Leonard to execute an agreement because he was not her power of attorney.

Tonkinson asked for service in his name at the Aldridge Way home where he resides with Leonard and their two children. He never agreed to be financially responsible for service at the Benner Road property. Tonkinson accused SJG of adding him to the account without his knowledge or permission. Tonkinson further argued that SJG is using a collection agency to recover this debt from Leonard not from him. (P-1.)

Additional Findings of Fact

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other

testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the petitioner during the hearing. Tonkinson primarily testified in a calm manner; however, his testimony was inconsistent or incredible in significant ways.

First, it is undisputed that Tonkinson verbally acknowledged to SJG that he was an account holder. Second, he engaged in conversations with SJG where his personal identifying information was accepted without question. Finally, he freely negotiated and signed a settlement agreement on the Benner Road account with SJG that contained the following language:

By accepting this credit, you agree that this constitutes full and final settlement, satisfaction and release of all claims of any kind that you may have now or that you may acquire in the future, with respect to this matter. **You further agree that you will pay the remaining balance noted above in full** and that you will not seek any further discount or reduction in the balance due to SJG.

[emphasis added]

Tonkinson agreed in writing to pay the very balance that he presently claims is not his obligation. For that reason and the credible testimony of Miller, I **FIND** that Tonkinson presented no evidence to support his position that the outstanding balance was not his responsibility. I **FURTHER FIND** as **FACT** and adopt the information contained in Miller's testimony about Tonkinson's involvement with the Benner Road account and his status as a customer of record.

LEGAL ANALYSIS AND CONCLUSION

Pursuant to N.J.A.C. 14:3-7.1(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." "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. 14:3-1.1.² SJG established that Tonkinson was identified in the account records as the person responsible for payment of the public utility bill. Tonkinson spoke to SJG representatives and identified himself as authorized to discuss the account and provided the verification that allowed SJG representatives to discuss the account with him. He maintained that his involvement was always meant to be limited to discussions on behalf of his wife. Tonkinson is seeking to be treated as Leonard’s power of attorney but presented no evidence of the existence of such an agency relationship. At all times pertinent to the settlement of the Benner Road dispute, Tonkinson held himself out to SJG as being authorized to negotiate in good faith and in his own name. Tonkinson signed the settlement agreement in his individual capacity agreeing to be personally responsible for the debt.

Public utilities are required to file tariffs setting forth complete schedules and charges for all classifications of service provided, as well as all rules and regulations relating to rates and charges or services used or to be used. N.J.A.C. 14:1-1.3 “Each utility shall operate in accordance with its tariff at all times, unless specifically authorized in writing by the Board to do otherwise.” N.J.A.C. 14:1-1.3(d). Each utility’s tariff shall be made available for public inspection. A public utility’s tariff binds all customers, regardless of their familiarity with its provisions. Application of Saddle River, 71 N.J. 14, 29 (1976).

Respondent’s Tariff for Service addresses the provision of service when there is an outstanding balance:

2.5 LIQUIDATION OF PRIOR DEBTS: Service will not be supplied by the Company to former customers until such time as any and all indebtedness to the Company for previous service has been paid or otherwise discharged, or until such time as a reasonable deferred payment arrangement acceptable to the Company is established to liquidate such debt.

² "End user" means a person who receives, uses, or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer of record, as defined in this section. Ibid.

<https://southjerseygas.com/SJG/media/pdf/pdf-regulatory/SJG-Tariff-No-13-July-2021.pdf>

Accordingly, pursuant to N.J.A.C. 14:3-3A.9, SJG may discontinue service until all outstanding charges are satisfied.

Petitioner contends he was opening a new account on Aldridge Way and had no responsibility for the outstanding charges attributed to the account for Benner Road. Petitioner has the burden of demonstrating by a preponderance of credible evidence that he did not owe an outstanding balance to respondent. I **CONCLUDE** petitioner has not met this burden. Petitioner's explanations concerning his intended limited involvement on behalf of his wife were insufficient to satisfy his burden in this matter. Petitioner provided sworn testimony that he went too far in executing the settlement agreement.

Despite not having the burden of proof, respondent took efforts to establish many facts of this case. Despite possessing a presumption of validity of its actions, respondent took care to demonstrate its analysis, which led to its reasonable belief that both Tonkinson and Leonard are responsible to SJG for the outstanding debt from the Benner Road residence.

Accordingly, I **CONCLUDE** that petitioner did not meet his burden of proof. Respondent properly denied petitioner's request for service in his name until satisfaction of the debt on the Benner Road account. Respondent determined that the outstanding gas service bill had not been satisfied.

ORDER

It is therefore **ORDERED** that the petition in this matter be and is hereby **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.



July 26, 2021
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

KMC/tat

APPENDIX

LIST OF WITNESSES

For petitioner:

Jules Tonkinson

For respondent:

Sarah Miller

LIST OF EXHIBITS

For petitioner:

P-1 Collection notice to Leonard

For respondent:

- R-1 Account screenshots
- R-2 Tax records – 8 Benner Drive
- R-3 Recorded telephone call, dated July 13, 2018
- R-4 Recorded telephone call, dated March 26, 2018
- R-5 Signed settlement agreement
- R-6 Tax records & deed for 27 Aldridge Way
- R-7 Customer account for 8 Benner Road

