



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

AUBREY MATTHEWS,)	<u>ORDER ADOPTING</u>
Petitioner,)	<u>INITIAL DECISION</u>
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC & GAS COMPANY,)	BPU DOCKET NO. GC07070533U
Respondent)	OAL DOCKET NO. PUC09826-07

(SERVICE LIST ATTACHED)

BY THE BOARD:

On July 17, 2007, Aubrey Matthews (Petitioner) filed a petition with the Board of Public Utilities (Board) requesting a hearing regarding charges of and credits received from Public Service Electric & Gas Company (Respondent) for utility services. Petitioner claimed that he was being improperly billed under a commercial account and was not satisfied with Respondent's subsequent refund when it applied the correct residential tariff.

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law (OAL) on September 19, 2007 for 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. This matter was first assigned to Administrative Law Judge (ALJ) Margaret M. Monaco and later transferred to ALJ Gail M. Cookson.

Following a hearing held on July 9, 2008, ALJ Cookson issued her Initial Decision on July 28, 2008. A copy of the Initial Decision is attached hereto. At its August 20, 2008 Board meeting, the Board sought and received a 45-day extension of time for issuing a Final Decision in this matter to October 27, 2008. On October 9, 2008, the Board received a letter from Petitioner, in which Petitioner states his exceptions to the Initial Decision. Prior to the extended date of October 27, 2008, the Board, at its October 23, 2008 meeting, requested an additional extension of time for issuing the Final Decision due to the receipt Petitioner's Exceptions that required review and to permit Respondent an opportunity to reply to Petitioner's Exceptions. The Board was granted an extension of time for it to render a Final Decision to December 11, 2008. Subsequently, Respondent filed its Reply to Petitioner's Exceptions, dated October 20, 2008, with the Board on October 22, 2008.

The Board has completed its review and now adopts the Initial Decision in its entirety.

Initial Decision

After a review of the entire record, including testimony of the witnesses, ALJ Cookson found that the Petitioner should have been billed by Respondent on a residential tariff rate from March 20, 2001 through September 19, 2006. (Initial Decision at 5). Additionally, ALJ Cookson found that, based on the rate schedules submitted by Respondent and as applied to Petitioner's historic usage, Petitioner was entitled to a credit of \$1,406.92, which is the difference between the application of the commercial rate and the residential rate. Furthermore, the ALJ concluded that Petitioner had previously received a credit from Respondent in the amount of \$3,282.36, which is more than twice the credit the ALJ found that Petitioner was entitled to receive. Respondent, during the hearing, stated that it was not seeking a refund of the amount above what Petitioner was entitled to receive.

Additionally, there was testimony concerning Petitioner's allegation that an improperly-sized meter was placed at his residence. ALJ Cookson found that, upon an investigation by Respondent, Respondent determined that while the meter was properly sized for the location, the meter was running fast such that it was measuring gas usage at 102.35%. Pursuant to N.J.A.C. 14:3-4.6, ALJ Cookson found that Petitioner was entitled to a credit in the amount of \$334.67, which was previously applied by the Respondent to Petitioner's account in April 2008. ALJ Cookson also found that the Petitioner's meter was properly sized for the residence and that there were no billing errors caused by the size of the meter. (Initial Decision at 5)

With respect to the credit for the overcharges billed to Petitioner as a result of applying the incorrect rate tariff, ALJ Cookson concluded that, while "[Respondent] could have been more clear and responsive in the resolution of [Petitioner's] complaint . . . the credit has been satisfactorily justified." (*Id.* at 6). As for the issue of the accuracy of Petitioner's meter, ALJ Cookson concluded that N.J.A.C. 14:3-4.6 supports the calculation of the credit in the amount of \$334.67 applied to Petitioner's account. Furthermore, ALJ Cookson found that because Petitioner's credit was more than twice the amount to which Petitioner was entitled, no further relief in the form of interest was required. Accordingly, ALJ Cookson found that there is no further relief to which Petitioner is entitled and that the Petition be dismissed.

Petitioner's Exceptions

In a letter dated September 26, 2008 and filed with the Board on October 9, 2008, Petitioner states his dissatisfaction with the Initial Decision because ALJ Cookson ruled in favor of Respondent. Furthermore, Petitioner argues that the hearing improperly focused on the derivation of the \$1,406.92 determined to be the credit to which Petitioner was entitled and not the \$3,282.36 credit Petitioner actually received from Respondent. Petitioner also states that the hearing did not address what Petitioner alleges to be the fraudulent billing practices of Respondent and Respondent's efforts to circumvent providing an explanation of the \$3,282.36 credit by putting forth the revised sum of \$1,406.92. Petitioner concludes by requesting that the Board reject ALJ Cookson's ruling.

Respondent's Reply

In Respondent's Reply to Exceptions dated October 20, 2008 and filed with the Board on October 22, 2008, Respondent argues that Petitioner's Exceptions were untimely filed with the Board in violation of N.J.A.C. 1:1-18.4(a) and that Respondent was not properly served by

Petitioner. Notwithstanding the procedural defects, Respondent contends that Petitioner's Exceptions do not present any findings of fact or conclusions of law as required by N.J.A.C. 1:1-18.4(b) and Petitioner has not presented any evidence of changed circumstances that would warrant a rejection of the Initial Decision. Accordingly, Respondent requests that the Board deny Petitioner's Exceptions and adopt ALJ Cookson's Initial Decision. (Respondent's Reply at 1).

Discussion

First, the Board must determine whether Petitioner's filed Exceptions satisfy the requirements provided in N.J.A.C. 1:1-18.4. Pursuant to N.J.A.C. 1:1-18.4, any party may file written exceptions with the agency head within 13 days from the date the Judge's Initial Decision was mailed to the parties and a copy of the filed Exceptions shall be served on all other parties and the judge. Furthermore, Exceptions shall:

1. Specify the findings of fact, conclusions of law or dispositions to which exception is taken;
2. Set out specific findings of fact, conclusions of law or dispositions proposed in lieu of or in addition to those reached by the judge; and
3. Set forth supporting reasons. Exceptions to factual findings shall describe the witnesses' testimony or documentary or other evidence relied upon. Exceptions to conclusions of law shall set forth the authorities relied upon. [N.J.A.C. 1:1-18.4 (b)].

In addition, N.J.A.C. 1:1-18.4(c) prohibits evidence not presented at the hearing to be submitted as part of the Exception, or incorporated or referred to within exceptions.

As required by the aforementioned regulation, Exceptions must be filed within the 13-day period, unless extensions are requested and granted pursuant to N.J.A.C. 1:1-18.8. ALJ Cookson's Initial Decision was dated July 28, 2008 and mailed to the parties on July 29, 2008. Petitioner's Exceptions were filed with the Board on October 9, 2008, after the 13-day time period, and Petitioner provided no explanation for his delay in submitting the Exceptions. Nonetheless, while Petitioner failed to file his Exceptions within the 13-day time limit, the Board has the discretion to relax or disregard procedural rules if the adherence to the rules would result in unfairness or injustice. N.J.A.C. 1:1-1.3. Taking into account Petitioner's *pro se* status, the Board will disregard the time requirements of N.J.A.C. 1:1-18.4 and consider Petitioner's Exceptions.

Additionally, Respondent takes issue with the substance of Petitioner's Exceptions, claiming that they do not meet the requirements set forth at N.J.A.C. 1:1-18.4(b) and (c). Petitioner in his Exceptions contends that 1) only the calculated credit of \$1,406.92 and not the \$3,282.36 credit actually received by Petitioner was addressed during the hearing; 2) the scope of the hearing should have included discussion of the alleged fraudulent billing practices of Respondent; and 3) Respondent's presentation of the \$1,406.92 credit was used as a smoke screen to hide Respondent's alleged wrongdoings. Based on the foregoing and because Respondent admitted that it could have done a better job explaining the credit to Petitioner, Petitioner concludes that the Board should reject ALJ's Cookson's Initial Decision. The Board will consider Petitioner's Exceptions to the extent that they meet the requirements of N.J.A.C. 1:1-18.4. Accordingly, the Board will address and consider Petitioner's argument that the credit of \$3,282.36 was not addressed during the hearing, because it relates to a finding of fact to which the Petitioner takes

exception. Additionally, the Board will consider and address the Petitioner's request that the Board reject the Initial Decision as it is a disposition proposed in lieu of that reached by ALJ Cookson. The Board will not address Petitioner's arguments related to Respondent's alleged fraudulent billing practices as these arguments were not presented at the hearing.

Having reviewed the record, the Initial Decision and filed Exceptions and Reply, the Board adopts ALJ Cookson's Initial Decision. Petitioner's claims with regard to the billing errors charged as a result of the applicability of the commercial tariff to his residential account were properly addressed within the scope of a billing dispute as addressed in N.J.A.C. 14:3-7.6. As discussed in the Initial Decision, Petitioner disputed the refund of \$3,282.36 credited to Petitioner's account to cure the billing error created when Respondent applied a commercial tariff to Petitioner's residential account. Petitioner contended that the credit was applied to his account without his consent and that he did not receive an explanation of the credit so that he could confirm the accuracy of the credit applied to Petitioner's account. A schedule showing a calculation of the credit to which Petitioner was entitled was entered into evidence as Exhibit R-1 during the July 9, 2008 hearing. This schedule showed that Petitioner was entitled to a credit of \$1,406.92, an amount substantially less than the credit of \$3,282.36 Petitioner received. Additionally, Respondent has stated on the record that it is not seeking a reimbursement of the amount credited to Petitioner in excess of the \$1,406.92 to which he was entitled. Furthermore, Mr. Edward Sullivan, Manager for Customer Operations at PSE&G, explained on the record how the original credit of \$3,282.36 was derived.

Petitioner asserts in his filed Exceptions that the derivation of the \$3,282.36 was never addressed although Respondent was directed by ALJ Monaco at the February 20, 2008 hearing to provide an explanation of the \$3,282.36 credit. However, as stated above, Mr. Sullivan did provide an explanation of how the original credit was derived. (Transcript, July 9, 2008 at 41:9 to 42:24; 64:22 to 67:8; 39:9 to 41:8). Mr. Sullivan testified that the credit of \$3,282.36 applied to Petitioner's account was derived using a factor based on 25 months of historic usage and applicable rates multiplied by 72 months, which is approximately the length of time Petitioner's account was improperly billed. Accordingly, the Board rejects Petitioner's argument that the derivation of the \$3,282.36 credit that Petitioner received was not explained during the hearing.

Petitioner also contends in his Exceptions that because Respondent acknowledged its error in calculating the original credit, Respondent should be held accountable and the Board should reject ALJ Cookson's ruling. Petitioner provides no legal basis for this argument. The Board finds that the Petitioner was improperly billed at the commercial tariff rate and that Petitioner was entitled to a credit of \$1,406.92. The Board acknowledges that Respondent's error in calculating the credit applied to Petitioner's account resulted in a credit to Petitioner of \$3,282.36. In other words, Respondent's error resulted in Petitioner receiving an excess credit in the amount \$1,875.44. Therefore, the credit of \$3,282.36 is a satisfactory resolution of the dispute and Petitioner is not entitled to further relief.¹

As to the burden of proof, the Board notes that even if, as the ALJ found, the Petitioner has the burden of proof on his billing dispute claim, this does not relieve the utility of its obligations to

¹The Board notes that even if N.J.A.C. 14:3-7.1(d) is applicable such that the Petitioner was owed interest on the \$1,406.92 credit to which he was entitled, Petitioner has received a credit of \$3,282.36 from Respondent. This credited amount is more than the total amount to which Petitioner is entitled, even including any interest that may be owed on the overpayments pursuant to N.J.A.C. 14:3-7.1(d). Accordingly, no further relief is warranted.

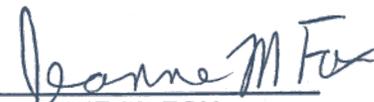
provide justification for the bill(s) as charged, including a showing by the utility that the customer was only charged for services received as indicated by a properly working meter with charges calculated under the rates of the appropriate tariff for the customer class. Here, the Board is satisfied that the proofs presented by the Respondent show that Petitioner was entitled to credits of \$1,406.92 and \$334.67, and that Petitioner did receive the credit of \$334.67 and a credit of \$3,282.36, which is in excess of the \$1,406.92 credit to which Petitioner was entitled.

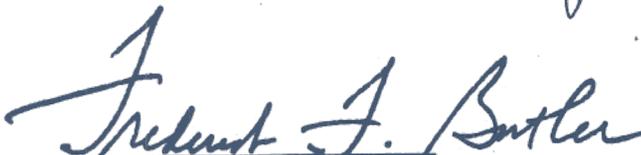
Petitioner did not file any Exceptions with regard to the calculation of the credit applied to Petitioner's account for the meter error. The Board finds that the credit of \$334.76 applied to Petitioner's account was credited in accordance with N.J.A.C. 14:3-4.6.

After careful review and consideration of the record, Petitioner's Exceptions and Respondent's Reply, the Board HEREBY FINDS the findings and conclusions of the ALJ to be reasonable and accordingly, HEREBY ADOPTS them. Therefore, the Board HEREBY ADOPTS the Initial Decision in its entirety and ORDERS that the Petition of Aubrey Matthews be and is HEREBY DISMISSED. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Company.

DATED: 12/9/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

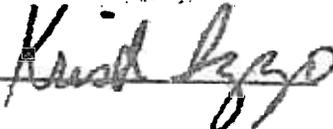

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
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



**AUBREY MATTHEWS
V.
PUBLIC SERVICE ELECTRIC AND GAS COMPANY**

**BPU DOCKET NO. GC07070533U
OAL DOCKET NO. PUC09826-07**

SERVICE LIST

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 09826-07

AGENCY DKT. NO. GC07070533U

AUBREY MATTHEWS,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC & GAS COMPANY,

Respondent.

Aubrey Matthews, appearing pro se

Alexander Stern, Esq., for respondent Public Service Electric & Gas Company
(PSE&G Services Corporate Counsel)

Record Closed: July 9, 2008

Decided: July 28, 2008

BEFORE GAIL M. COOKSON, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On July 17, 2007, Aubrey Matthew (petitioner) filed a complaint with the Board of Public Utilities (Board) relating to the accuracy of certain bills and credits issued by Public Service Electric & Gas Company (PSE&G or respondent) for his gas utility service. On September 10, 2007, PSE&G filed its Answer to the dispute with the Board. On September 27, 2007, the Board transmitted the matter 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. The matter was originally scheduled to be heard on February 20, 2008,

52:14F-1 to- 13. The matter was originally scheduled to be heard on February 20, 2008, before the Honorable Margaret M. Monaco, A.L.J. On that date, the parties met at the OAL and agreed to adjourn the hearing in order to allow for further discovery and settlement discussions. The matter was rescheduled for April 15, 2008, but that date was subsequently adjourned due to the unavailability of a witness. In the interim, the case was transferred to this Administrative Law Judge.

On April 29, 2008, I held a telephonic conference with the parties to discuss various discovery and pre-hearing issues. At that time, petitioner maintained that he intended to seek additional damages from the utility company to which respondent was opposed. Accordingly, I established a date certain by which the petitioner was to file any amended pleading with an opportunity for respondent to oppose it, or petitioner was to state that he would be foregoing any amendment. In a letter dated May 12, 2008, petitioner advised that he would not be amending his petition. R-2. On July 9, 2008, a hearing was held in this matter, on which date the record closed.

FINDINGS OF FACT

Based upon a review of the entire record and giving due consideration for the testimony of the witnesses, as discussed below, I **FIND** the following to be facts.

Petitioner owns and lives in a two-family house located at 74 Chelsea Street, Newark, New Jersey. He has owned that property since approximately 1988. His family lives in one unit of the house and he rents the other unit. There are three gas meters connected to the property. One meter measures the supply of gas to the hot water heater to the entire house and petitioner's kitchen. One meter measures the supply of gas to the rental kitchen. The last meter measures the supply of gas heat to the entire house. The structure was originally heated with oil but petitioner converted to gas heat in or about October 1999 at which time the third meter was added.

Petitioner began to question the accuracy of his gas utility bills in August 2006, when he paid his PSE&G bill in the amount of \$191.34. During the next billing cycle, the amount of that payment was indicated as a payment toward a "deposit" rather than

toward the balance due. Upon inquiry, he was informed that his heating account was considered to be on a commercial tariff and that a deposit was required because of some history of late payments. Petitioner disputed the commercial designation but felt that he could not get any satisfactory explanation or rectification from respondent. On September 23, 2006, he wrote to the Board seeking its assistance with the dispute. P-1. In apparent response to his dispute and informal customer assistance of the Board, Julie Brailey, a representative of PSE&G, contacted him on October 26, 2006. Over the course of several further communications, he was able to get his prior payment of \$191.34 applied to his outstanding balance. In response to his numerous telephone calls, PSE&G also reviewed the issue of the applicability of a commercial tariff to his two-family house. On December 8, 2006, Ms. Brailey forwarded to petitioner copies of the applicable tariffs for its general (commercial) service and its residential service rates for the applicable periods. However, petitioner found these unavailing in helping him figure out if he had been billed under the wrong rate and if so, how much he was owed.

In March 2007, a field inspection of his house was conducted. It was determined at that time that his property actually should have been on a residential tariff schedule rather than a commercial rate. In the spring of 2007, a credit appeared on his statement in the amount of \$3,282.36 but there was no narrative or other explanation of how it was derived. Petitioner continued to pursue communications with Ms. Brailey without success and then turned again to the Board for assistance in his frustration to understand the credit. Petitioner believed that the amount of the credit required explanation, discourse and agreement between both parties involved and not just a unilateral decision by respondent. Because he did not receive what he believed to be bilateral communications and mutual decisions on his billing concerns, petitioner filed a formal complaint with the Board as stated above. In response to the formal Answer of PSE&G, petitioner filed a reply to the Answer that set forth a demand for \$250,000.00 in relief and also seemed to question the type and size of meter (commercial v. residential) that was on his property. P-3.

and calculations by respondent. His cross-examination of the respondent's witnesses elicited no admissions of any errors or omissions in those credits already issued. In effect, petitioner admitted that all that remains of his dispute with respondent is a lack of confidence in the accuracy of or an explanation of the bill credits he has already received from the respondent, and in the length of time the dispute process has taken.

Edward C. Sullivan testified for respondent on the procedures of the Customer Relations Department that he supervises in general, and on the particular practices undertaken in response to petitioner's concerns that he had been improperly billed as a commercial gas customer. On the basis of petitioner's initial query, online data was researched by the Customer Service Department but that data only includes the most recent twenty-five months. Using that data, an average monthly differential was derived for petitioner to account for the two tariff schedules. That monthly figure was then multiplied by seventy-two months in order to derive a six-year credit owed to petitioner. Mr. Sullivan explained that this credit was an inexact method of generating the credit but erred in favor of petitioner. It was on this basis that the credit of \$3,282.36 was issued to petitioner in February 2007. R-3.

When petitioner continued to contest the accuracy of the credit, Mr. Sullivan had actual usage data pulled from archived records for the property and a schedule prepared to show the amounts that would have been charged had the then-applicable residential tariff rates been utilized. R-1. Mr. Sullivan also explained that the PSE&G tariff was amended effective January 2002 to allow multi-family dwellings to be serviced on the residential tariff. In spite of that date as the point in time when petitioner should have been credited for the tariff differential, the Billing Summary Schedule applied that lower tariff rate back to March 20, 2001, the date when he was placed on the general commercial tariff, to petitioner's advantage. The credit thus calculated came to \$1,406.92 for an approximately five and one-half year period. Mr. Sullivan admitted on cross-examination that the company should have done a better job of explaining the credit process to petitioner. At all times, PSE&G was treating him fairly and any errors were in his favor and done to expedite resolution of the customer's concerns.

I **FIND** that petitioner should have been billed by respondent on a residential tariff rate for the period March 20, 2001 through September 19, 2006. I **FIND** that respondent's Billing Summary schedule is accurate with respect to the impact of the difference between the two rate schedules for petitioner's historic usage. Accordingly, I **FIND** that petitioner was entitled to a credit of \$1,406.92 on the difference between the application of the commercial or general tariff rate and the residential tariff rate

Apparently in response to the new issue of the form of meter on his property, respondent re-inspected his property on March 14, 2008. The company swapped out the third (gas heat) meter and replaced it with one of similar size. The technician on site determined that the meters were properly sized for the furnace and other usages on the property but in accordance with protocol, replaced it and took the removed meter to its lab. As explained by Kennie Mackin, a supervisor for PSE&G in its Summit Gas District Service Operations Department, respondent's meter was properly sized and was not too big. In fact, the meter installed at the property was the second smallest meter respondent utilizes. Even if a meter is "oversized" for a location, the consequence for the customer is not over billing but actually could result in under billing because the sensitivity to low flow decreases as the meter size increases. On the basis of this undisputed testimony, I **FIND** that petitioner's property was serviced with a properly sized meter and that he has demonstrated no error in billings due to the size of his meter.

Nevertheless, the PSE&G lab did certify that the removed meter was running fast such that it was measuring the gas usage at 102.35%. Because the Board allows a variance in perfect accuracy of only +/- 2%, respondent calculated the credit owed to petitioner in the amount of \$334.67 for the excessive meter inaccuracy of 2.35% consistent with the regulations and its internal protocols. P-4. This credit was applied to petitioner's account in April 2008. R-3. Accordingly, I **FIND** that petitioner was entitled to a credit of \$334.67 on the issue of the accuracy of the meter.

Further, I **FIND** that PSE&G has already applied the credits to petitioner's account in the amounts of \$3,282.36 and \$334.67, respectively. Respondent has not

cross-claimed for a rebate of any credit paid in excess of what might have been due petitioner.

LEGAL DISCUSSION

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). This petition raises the issue as to whether petitioner has been properly charged for gas utility service to his two-family house during the period since he converted the structure to gas heat and whether he was properly credited for any overcharges.

Petitioner has disputed that PSE&G applied the proper amount of credit to his account in compensation for errors in the applicability of a non-residential tariff to his two-family home. N.J.A.C. 14:3-7.6. Petitioner admits that he received the credits discussed above and respondent admits that he was entitled to those. I have found that he was entitled to substantially less than he actually received but respondent has not sought reimbursement of any excess credit. While petitioner and respondent had some trouble communicating with respect to the reasons and basis for the various calculations, the parties were progressing through the issue on a semi-regular basis. Less than nine months lapsed between the time when petitioner first became aware of his status as a commercial gas customer and the posting of a (excessive) credit to his account. He contacted the Board for dispute assistance the second time in July 2007 for the single reason that he did not understand the derivation of the credit and was of the opinion that it should have been the subject of two-party negotiations. The company could have been more clear and responsive in the resolution of this customer complaint but I **CONCLUDE** that its credit has been satisfactorily justified. I further **CONCLUDE** that there is no further relief to which petitioner is entitled on his billing dispute as to the proper tariff that should have been applied to his two-family house. Because the actual credit granted was more

than twice that to which petitioner was entitled, no further relief in the form of interest shall be required.

With respect to the issue of the accuracy of petitioner's meter, its size and any credit due and owing, there is no genuine dispute that petitioner's meter demonstrated a variation in accuracy over the Board's published tolerances. Respondent relied upon N.J.A.C. 14:3-4.6 in support of the calculation of the second credit. That regulation states in pertinent part:

§ 14:3-4.6 Adjustment of charges for meter error

(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.

* *

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was inaccurate at the time of the test adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the applicable time period as follows:

i. Determine the time between the test that found the meter inaccurate and the most recent previous test of the meter. This time period may be longer than the time the meter has served the existing customer;

ii. Divide the time determined under (c)2i above in half; . . .

Based upon the testimony and documents presented, I **CONCLUDE** that the undisputed evidence clearly demonstrates that respondent properly applied the Board regulation to

It is herein 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 (45) 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.

July 28, 2008
DATE

Gail M. Cookson
GAIL M. COOKSON, ALJ

Date Received at Agency:

7/25/08

JUL 29 2008
DATE
pb

Mailed to Parties:
John P. Sanders
DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE LAW

APPENDIX

WITNESSES

For Petitioner:

Aubrey Matthews

For Respondent:

Edward B. Sullivan

Kennie Mackin

EXHIBITS

For Petitioner:

- P-1 Letter dated September 23, 2006, from Matthews initiating billing inquiry
- P-2 Letter dated December 8, 2006, from Julia Brailey for PSE&G to Matthews
- P-3 Letter dated September 15, 2007, to BPU Secretary Kristi Izzo
- P-4 Letter dated April 28, 2008, from Michael P. Kelly, Manager Billing Services to Matthews

For Respondent:

- R-1 Billing Summary re Acct. # 11-529-147-15, dated March 24, 2008
- R-2 Letter dated May 12, 2008, from Matthews to OAL
- R-3 General Inquiry Computer Printouts re Acct. # 11-529-147-15, dated July 8, 2008

08 OCT 21 AM 9:47
BOARD OF
NEW JERSEY
SOLICITORS



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

**This decision was mailed to the parties
on JUL 29 2008**

OFFICE OF
THE GENERAL SOLICITOR

RECEIVED
REF ID: AS