



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

CUSTOMER ASSISTANCE

ROBERT PHILLIPS,
Petitioner,

v.

SOUTH JERSEY GAS COMPANY,
Respondent.

) ORDER ADOPTING INITIAL
) DECISION IN PART AND
) MODIFYING IN PART

) BPU DOCKET NO. GC06090655U
) OAL DOCKET NO. PUC 4596-07

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition filed on September 20, 2006, Robert Phillips (Petitioner) alleged that he had been improperly billed by South Jersey Gas Company (Respondent) as a result of a non-registering gas meter. After receipt of Respondent's answer, the Board of Public Utilities (Board) transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested case.

On April 22, 2008, Administrative Law Judge (ALJ) Bruce M. Gorman submitted his Initial Decision in this matter to the Board. The Board requested and the OAL granted an extension in order to further review this matter. No exceptions to the Initial Decision have been filed with the Board.

The procedural history, factual discussion, and conclusions of law in this matter are set forth in sufficient detail in the Initial Decision and need not be restated herein. As to one aspect of the Initial Decision, the Board notes that, in calculating the amount owed by Petitioner to Respondent, the ALJ deducted the "service charge" based on the ALJ's determination and the testimony that a "service charge" covers the cost of reading the meter. Respondent's "service charge," described in its Board-approved tariff as the "customer charge," covers more than just the meter reading. The Board's regulation in existence at the time also allowed a billing adjustment in a situation such as this. Therefore, the Board does not adopt the ALJ's reasoning for the deduction of the \$257.22 service charge.

However, upon review of the record and in light of the fact that neither party to this case filed exceptions to the Initial Decision, the Board will allow the \$257.22 deduction from the amount owed by Mr. Phillips. Because neither party took exception to the Initial Decision, it appears to the Board that the parties agree to the payment of \$1064.06¹ less the \$257.22 as resolution of the billing dispute. Furthermore, because an order of remand for more proceedings would cause the parties, the Board, and the OAL to spend more resources on the issue of the \$257.22 deduction, the Board finds that, under these circumstances, payment of \$806.84 is an acceptable resolution.² Board Staff may also consider recommending amendments to the Board's regulations. Thus, the Board adopts in part the ruling of the ALJ, but not the conclusions and reasoning set forth by the ALJ for the \$257.22 deduction.

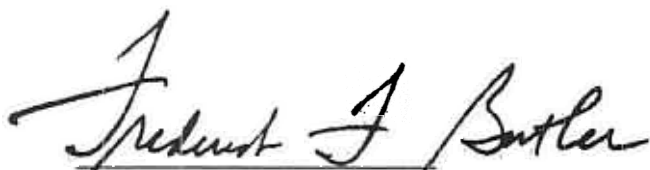
The Board HEREBY ADOPTS the Initial Decision in part and MODIFIES the Initial Decision in part so as to not adopt the ALJ's conclusions and rationale with regard to the \$257.22 deduction.

DATED: 7/16/08

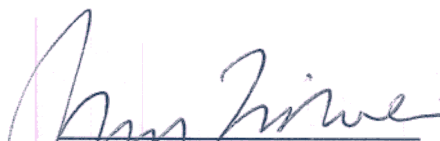
BOARD OF PUBLIC UTILITIES
BY:



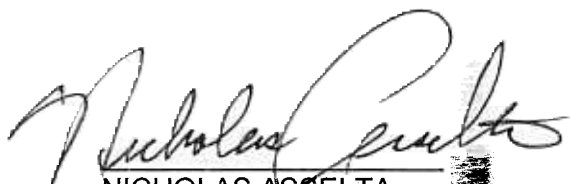
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER



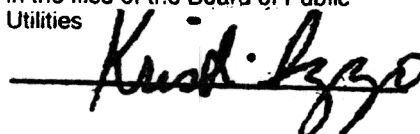
ELIZABETH RANDALL
COMMISSIONER

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



¹ The Board notes that the ALJ references the final amount contested as \$1064, but Respondent's Answer lists the amount as \$1064.06. Therefore, the Board will use the amount listed in the Answer.

² In addition, the ALJ references the total amount owed as \$806.78, \$808.78, and \$808.28. (Initial Decision 5.) In calculating the award, the Board notes that the proper amount is \$806.84.

ROBERT PHILLIPS

V.

SOUTH JERSEY GAS COMPANY

BPU Docket No. GC06090655U

OAL Docket No. PUC 4596-07

SERVICE LIST

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NEWARK, NJ



State of New Jersey
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NEWARK, NJ

CMS
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R.P.60

PASKO, A

INITIAL DECISION

OAL DKT. NO. PUC 4596-07

AGENCY DKT. NO. GC06090655U

ROBERT PHILLIPS,

Petitioner,

v.

SOUTH JERSEY GAS COMPANY,

Respondent.

Robert Phillips, petitioner, pro se

Gina Merritt-Epps, Esq., for respondent

Record Closed: April 21, 2008

Decided: April 22, 2008

BEFORE **BRUCE M. GORMAN**, ALJ:

STATEMENT OF THE CASE

Petitioner appealed respondent's action charging him retroactively for the use of its product during a time period when his gas meter was not functioning.

PROCEDURAL HISTORY

The petitioner requested a fair hearing and the matter was transmitted to the OAL on June 21, 2007, 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 April 18, 2008, and the record closed.

FACTUAL DISCUSSION

Petitioner has resided at 238 Wheat Road, Apartment 102 in Minotola, New Jersey for in excess of fifteen years. His apartment utilizes gas to heat and to cook. Respondent, South Jersey Gas Company (Company), provides gas to his apartment.

Commencing in March 2000, his monthly gas bill dropped dramatically. For the next thirty five months, his charges fluctuated between seven dollars and nine dollars. In January 2003, respondent discovered that petitioner's meter had ceased to function.

The Company reviewed petitioner's account and determined that he had been receiving gas without charge. Stacy Oropallo, Quality Assurance Specialist, explained that during the thirty five months between March 2000 and January 2003, petitioner was only assessed a service charge of between seven and nine dollars. Oropallo stated that the service charge was for the cost of reading the meter. Because the meter was malfunctioning, petitioner was not charged for the gas he consumed.

Oropallo presented a chart (R-1) showing petitioner's bills from January 2000 through January 2007. She explained that the column denoted "CCF" shows the amount of the cubic feet of gas used each month. From March 2000 through January 2003, the chart shows the number "0" for the cubic feet of gas used by petitioner. Oropallo explained that this reading showed petitioner's meter was not functioning.

Because the meter malfunctioned and the meter readers did not detect the problem, the Company does not know how much gas petitioner actually utilized during the months in question. The Company backcharged petitioner by taking two

subsequent sample months and calculating the number of cubic feet of gas petitioner would have utilized based upon the temperature at the time. The two months utilized differed. July 3, 2003 through August 4, 2003 used a "non-heat use factor", which means that the temperature outside was at a level that did not warrant the use of heat. The second month, January 5, 2004, through February 3, 2004, utilized a "Heat Sensitive Use Factor," which means the temperature outside warranted the use of heat. Oropallo presented a more detailed explanation of the calculation process in a letter to petitioner that attempted to explain how and why he was being backcharged (R-2).

Oropallo testified that the final calculation resulted in a backcharge of \$1064. Petitioner was afforded the opportunity to pay this sum at the rate of \$30 per month.

Petitioner objected to the backcharge. He noted that he always paid his bill on time. He claimed, and counsel for the Company agreed, that he was completely and totally blameless in this matter. The failure to pay for the gas was caused by the faulty meter. Both parties concurred that maintenance of the meter was the responsibility of the Company.

Petitioner stated he turns down his heat every day when he goes to work. He has been employed by the Department of Corrections for many years, and his shifts vary. However, on cross examination, petitioner admitted he utilized the Company's gas during the thirty five month period in question.

Based upon the testimony and evidence adduced at trial, make the following findings:

- 1 Petitioner utilized the Company's gas between March 2000 and January 2003
2. Petitioner did not pay for the gas he used between March 2000 and January

3. Petitioner failed to pay for the gas because he was not billed for the gas.
4. Petitioner was not billed for the gas because the gas meter affixed to his apartment malfunctioned.
5. The failure of the meter to function was solely the fault and responsibility of the Company.
6. The Company's meter readers and/or billing department was negligent and careless in failing to determine the meter was malfunctioning for a period of thirty five months.
7. The failure to pay for the gas occurred through no fault of petitioner, who has always paid his bill in a timely fashion.
8. The sum of \$1064 represents the fair and reasonable value of the gas supplied to petitioner over the thirty five month period in question.
9. Petitioner was charged a monthly service charge to cover the cost of reading the meter.

CONCLUSIONS OF LAW

Respondent Company relied upon N.J.A.C. 14:3-4.7(c) in support of its action. That regulation states in pertinent part:

(c) No adjustment shall be made for a meter that is found to be registering less than 100 percent except in the case of meter tampering, non-registering meters or in circumstances in which the customer should reasonably have known that the bill did not reflect the actual usage.

1. In cases of a debit adjustment to a customer's account, except in cases of theft or tampering, the customer shall be allowed to amortize the payments for a period of time equal

to that period of time in which the charges were adjusted. Debit adjustments shall be limited to a maximum period of six years.

Based upon the regulation, the Company has the right to recoup the value of the supplied gas. Petitioner received the gas, and he is not entitled to a windfall. He reasonably should have known that the bill did not reflect actual usage. Accordingly, the Company is entitled to \$1064 in compensation for the gas supplied between March 2000 and January 2003.

However, the Company caused this situation by the negligent and careless manner in which its employees failed to maintain the meter and failed to note that petitioner was not being properly charged.* The Company offered no explanation as to why it took thirty five months to discover petitioner was not being properly billed.

Oropallo specifically stated that the Company imposed a service charge on petitioner for the monthly reading of its meter. That service charge is reflected on R-1 as the "Current Gas Bill" for the period March, 2000 through January, 2003. Those service charges amount to a total of \$257.22 for thirty three months.¹

Since the Company performed its meter reading and maintenance in a negligent and careless fashion, it should not be allowed to collect that service charge from petitioner. Accordingly, \$257.22 must be deducted from the \$1064.

Accordingly, I **AWARD** respondent Company the sum of \$806.78, representing the difference between the \$1064 in gas charges and the \$257.22 in service fees for the reading of the meter.

ORDER

ORDER that respondent be awarded the sum of \$808.78 at the rate of \$23.1 (\$808.28 ÷ 35 months - \$23.11) per month in accordance with N.J.A.C. 14:3-4.7(c)1..

¹ For reasons unexplained, R-1 reflects no service charge for August and September 2001

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, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 22, 2008

DATE

Date Received at Agency

4/24/08



BRUCE M. GORMAN, ALJ



Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

/sd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Robert Phillips

For Respondent:

Stacy Oropallo

EXHIBITS

For Petitioner:

None

For Respondent:

R-1 Statement of Customer's Account
 Degree Day Calculation
 Not admitted