



Agenda Date: 4/27/11
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

DR. CHRISTIANOS VON COLIJEFF,
Petitioner,

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent.

) ORDER ADOPTING
) INITIAL DECISION
)
)
) BPU DOCKET NO. EC10060395U
) OAL DOCKET NO. PUC08356-10

Dr. Christianos Von Colijeff, Newark, New Jersey, Petitioner, *pro se*

Sheree L. Kelly, Esq., Newark, New Jersey, on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:

By petition filed with the Board of Public Utilities (Board) on June 7, 2010, Dr. Christianos Von Colijeff (Petitioner) disputed bills for utility services rendered by Public Service Electric and Gas Company (Respondent). After receipt of Respondent's answer, this matter was transmitted by the Board to the Office of Administrative Law for hearing as a contested matter on July 29, 2010, where it was assigned to Administrative Law Judge (ALJ) Kimberly A. Moss.

On March 9, 2011, ALJ Moss issued her Initial Decision in this matter, a copy of which was received by the Board on March 16, 2011. A copy of the Initial Decision is attached hereto and made a part hereof. The Board received a submission from Petitioner that was sent by facsimile transmission to the ALJ on or within one day of the filing of the Initial Decision on March 9, 2011, therefore the Board will treat Petitioner's submission dated March 8, 2010 as Exceptions to the Initial Decision.

The Statement of the Case and the Findings of Fact are set out in detail by ALJ Moss on Pages 1-4 of her Initial Decision. After a telephone prehearing on October 6, 2010, a status conference originally scheduled for November 1, 2010 was rescheduled to November 19, 2010, at Petitioner's request. The status conference was then rescheduled at the request of Petitioner and eventually held on December 22, 2010. At the conference, in response to Petitioner's statement that he did not have his schedule and therefore was not sure when he

would be available, ALJ Moss set a peremptory hearing date for February 18, 2011 in order to provide Petitioner with sufficient time to clear his calendar. Despite denying another request for an adjournment on December 23, 2010, the ALJ granted a February 10, 2011 request for an adjournment and rescheduled the peremptory hearing date to March 8, 2011. Subsequently, on February 19, 2011 and February 27, 2011, Petitioner again requested an adjournment of the hearing date to late June, claiming he was unable to obtain computer information and hard-copy documents that were necessary for him to proceed. Both requests were denied by ALJ Moss. By letter dated March 7, 2011, Petitioner stated he had consulted with Neal Flaster, Esq., for consideration to be retained as counsel, and requested a ninety--day adjournment, which ALJ Moss denied. He then requested reconsideration of the denial of the adjournment request, requested a sixty--day adjournment or, in the alternative, that the case be dismissed without prejudice. These requests were also denied by ALJ Moss. On March 8, 2011, the date of the hearing, Petitioner faxed a letter requesting that ALJ Moss recuse herself from the case, as she had not granted the adjournment and was siding with the other party. That request was also denied. Petitioner did not appear at the hearing. As a result, ALJ Moss recommended that this matter be dismissed for lack of prosecution.

In the Exceptions, the Petitioner alleges that ALJ Moss was prejudiced because she would not permit further adjournments of the proceedings. He then stated that he could not "...cooperate...with her unfit hearing date order..." as he was "...a lead scientist in a complicated process producing a new solution for the U.S. enormous health challenges." He went on to say that his work took him to many parts of the country and that the work must be completed so that it may "...be introduced on time to the U.S. Congress, Senate, White House, President and to all necessary federal agencies." In addition, Petitioner stated that his computer had crashed and that, unknown to him, boxes of materials were inaccessible in Florida.

On April 5, 2011, Respondent submitted a Reply to Exceptions, which is supportive of the ALJ's Initial Decision and consistent with the findings and conclusions of the Board as set forth below.

After consideration and review of the record in this matter, the Board FINDS that:

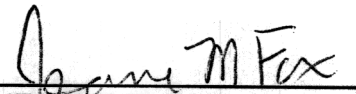
1. The actions taken by ALJ Moss were correct and that she showed great patience in her willingness to make schedule adjustments to accommodate Petitioner.
2. Petitioner submitted no valid reasons why he could not appear at the scheduled hearing date.
3. ALJ Moss exhibited no prejudice against Petitioner and, based upon her analysis of N.J.A.C. 1:1-14-12, correctly declined to recuse herself from this matter.
4. Petitioner was given numerous opportunities to present his case and cannot now claim that he was denied the right to be heard.
5. Despite advanced notice, Petitioner did not appear at the hearing scheduled for March 8, 2011.
6. Because of Petitioner's failure to appear at the scheduled hearing, ALJ Moss was correct in applying the provisions of N.J.A.C. 1:1-14.4(a) and recommending that the petition be dismissed for lack of prosecution.
7. The findings of fact and conclusions of law set out in the Initial Decision are reasonable.

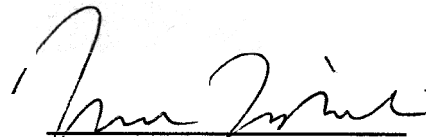
Based on the foregoing, the Board HEREBY ADOPTS the Initial Decision submitted by ALJ Moss in its entirety without modification. Accordingly, the petition in this matter is HEREBY DISMISSED for lack of prosecution.

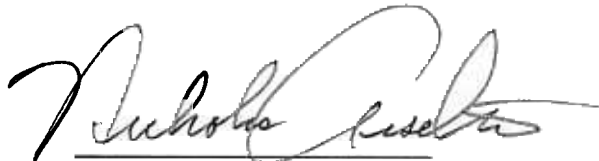
DATED: 4/27/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

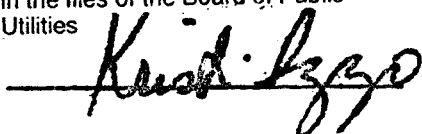

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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



DR. CHRISTIANOS VON COLIJEFF

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10060395U

OAL DOCKET NO. PUC08356-10

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. PUC 08356-10

AGENCY DKT. NO. EC10060395U

DR. CHRISTIANOS VON COLIJEFF,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY,**

Respondent.

2011

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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

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Dr. Christianos Von Colijeff, pro se

Sheree Kelly, Esq., for respondent, Public Service Electric and Gas

Record Closed: March 8, 2011

Decided: March 9, 2011

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On June 2, 2010, petitioner, Dr. Christianos Von Colijeff (Von Colijeff or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Public Service Electric and Gas (PSE&G) for services provided to 262 Kerrigan Boulevard, Newark, New Jersey. On August 10, 2010, this matter was

transmitted 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. A telephone prehearing was conducted on October 6, 2010, at which time a status conference was scheduled for November 1, 2010. On October 26, 2010, petitioner requested an adjournment of the November 1, 2010, conference to November 19, 2010. Petitioner's request for an adjournment was granted. Petitioner then requested that the November 19, 2010, conference also be rescheduled. His request was granted and the conference was scheduled for December 22, 2010. The conference was held on December 22, 2010 and a hearing date was set. Petitioner stated that he did not have his schedule; therefore he did not know when he would be available. I scheduled a peremptory hearing for February 18, 2011, to allow petitioner time to clear his calendar.

Petitioner left a voicemail message on December 23, 2010, stating he was not available on February 18, 2011. Petitioner was informed, by letter dated December 23, 2010, that he had ample time to re-arrange his schedule to attend the hearing. On January 20, 2011, petitioner was sent a reminder that the hearing was scheduled for February 18, 2011.

On February 10, 2011, petitioner sent a request for an adjournment of the February 18, 2011, hearing date. Petitioner's request for an adjournment was granted and the matter was rescheduled for a peremptory hearing on March 8, 2011. On February 19, 2011, petitioner sent a letter requesting an adjournment until late June 2011 because he was unable to obtain computer information and hard-copy documents in order to proceed. His request for an adjournment was denied. Petitioner again requested an adjournment of the March 8, 2011, court date in a letter dated February 27, 2011. He again stated he would not have access to his computer and documents until late June 2011. This request for an adjournment was also denied.

On March 7, 2011, Neal Flaster, Esq. (Flaster) sent a letter stating that petitioner had consulted with him in order for consideration to be retained as counsel. Flaster requested a ninety-day adjournment, which was denied; sent a request for reconsideration of the denial of the adjournment request; requested a sixty-day

adjournment or in the alternative that the case be dismissed without prejudice; that request for reconsideration of the adjournment was also denied.

On March 8, 2011, petitioner faxed a letter requesting that I recuse myself from the case. The recusal request was denied.

The hearing was held on March 8, 2010, after which I closed the record. Petitioner failed to appear for the hearing.

FINDINGS OF FACT

Based on the procedural record in the file, I FIND the following facts:

Status conferences were adjourned on two separate occasions, November 1, 2010, and November 19, 2010, to accommodate petitioner. At the December 22, 2010, conference, a peremptory hearing date was scheduled for February 18, 2011. On December 23, 2010, petitioner left a voicemail message stating that he was not available on February 18, 2011. Petitioner was informed that he had ample opportunity to re-arrange his schedule to allow him to attend the hearing.

Petitioner requested an adjournment of the February 18, 2011, hearing date because his computer, which had information he needed for the hearing, had crashed and the hard copy of his documents were in Florida. The hearing was adjourned to a peremptory hearing dated of March 8, 2011. In a letter dated February 19, 2011, petitioner requested an adjournment because he did not have the opportunity to get his computer fixed and the hard copies of the materials are in various unlabeled boxes in Florida. Petitioner's adjournment request was denied. In a letter dated February 27, 2011, petitioner again requested an adjournment for the reasons stated in his previous letter. He requested that the case be adjourned until late June 2011 or early July 2011. This adjournment request was denied.

On March 7, 2011, Flaster sent a letter stating that petitioner had consulted him on March 5, 2011, for the purposes of retaining him as counsel. Flaster requested a

ninety-day adjournment. The reason for the adjournment would be for petitioner to retrieve the files; Flaster to review the files; and then to determine if he would represent petitioner. This adjournment request was denied. On the same day Flaster sent a second letter stating that petitioner was out-of-state and could not attend the hearing. He requested a sixty-day adjournment or in the alternative that the case be dismissed without prejudice. This adjournment request too was denied.

On March 8, 2011, petitioner faxed a letter requesting I be recused from this case, a new judge be assigned to the case, and the hearing be rescheduled late June 2011 or early July 2011. Petitioner stated that I should be recused because I did not grant his adjournment request; therefore I am siding with the other party. Petitioner's recusal request was denied.

Respondent appeared for the hearing on March 8, 2011. Petitioner failed to appear for the hearing.

CONCLUSIONS OF LAW

N.J.A.C. 1:1-14-12 states:

- (a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:
1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;
 3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;
 4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;
6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;
7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or
8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

Petitioner's request for recusal did not provide any factual or legal basis for recusal. Petitioner's letter states that since he was not granted an adjournment that I was siding with the other party. There was no bias against petitioner. The denial of an adjournment request is not grounds for recusal. Therefore, I **CONCLUDE** that petitioner did not provide sufficient grounds for recusal.

N.J.A.C. 1:1-14.4(a) provides that, if after appropriate notice, a party does not appear in a proceeding scheduled by the Clerk of OAL, the judge may direct the Clerk to return the matter to the transmitting agency if the judge does not receive an explanation for the non-appearance within one day. Petitioner was informed on several

occasions that the March 8, 2011, hearing date would not be adjourned. (See Exhibits 12 through 21, which are attached hereto for reference.)

For the above reasons, I **CONCLUDE** that petitioner failed to appear at the hearing and that this matter should be dismissed for lack of prosecution.

ORDER


It is **ORDERED** that Von Colijeff's application for relief be **DISMISSED** pursuant to N.J.A.C. 1:1-14.4, and I **DIRECT** the Clerk to return the matter to the Board of Public Utilities for appropriate disposition.

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, Suite 801, Newark, N.J. 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

MARCH 9, 2011
DATE


KIMBERLY A. MOSS, ALJ

Date Received at Agency:

3/9/2011

Date Mailed to Parties: march 10, 2011
ljb


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE