



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

CUSTOMER ASSISTANCE

SHIRLEY SAVAGE,)	ORDER ADOPTING INITIAL
)	DECISION
Petitioner,)	
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC & GAS COMPANY,)	
)	BPU Dkt. No. GC08100920U
Respondent.)	OAL Dkt. No. PUC 2705-10

SERVICE LIST ATTACHED

Shirley Savage, Camden, New Jersey, appearing pro se.

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

BY THE BOARD:

By petition filed with the Board of Public Utilities ("Board") on October 9, 2008, Shirley Savage ("Petitioner") requested a formal hearing regarding charges assessed by Public Service Electric & Gas Company ("PSE&G" or "Respondent"). After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") 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. The matter was assigned to Administrative Law Judge ("ALJ") Laura Sanders.

BACKGROUND

On October 9, 2008, Petitioner filed a formal complaint with the Board, claiming that her service had been improperly shut-off. Petitioner alleged that PSE&G failed to investigate properly her concerns about diversion of service, high bills, and inaccurate meters. On March 19, 2009, PSE&G filed its Answer with the Board denying the allegations that Petitioner was improperly billed. PSE&G asserted, among other things, that Petitioner failed to state a claim upon which relief can be granted and that PSE&G provided utility services to the Petitioner in conformance with its Tariffs and the law. As a result, Respondent requested that Petitioner's claims be dismissed.

Evidentiary Hearing

ALJ Sanders conducted an evidentiary hearing on April 8, 2011. Petitioner testified that she has been reporting meter tampering, over-billing, and unreliable metering since 2002. (T 95-11 to 100-6). Despite her repeated calls to PSE&G, Respondent did not investigate until 2008. (T 98-11 to 98-17). Petitioner criticizes the exhaustiveness of PSE&G's investigation and disputes its conclusion that there was no diversion of services. (T 98-22 to 100-6; 111-4 to 112-25). Petitioner also disputes that she has received a credit of \$973.02 from Respondent. (T 101-15 to 104-22). Petitioner believes her bills are too high because she lives alone and does not use any of the electrical appliances. (T 97-21 to 98-10). Petitioner claims that the various credits provided by PSE&G to her account support her allegations of diversion of services and of cross-wiring. (T 112-8 to 112-16). Petitioner moved nine (9) documents into evidence. (T 107-4 to 107-11).

William F. Smith Sr., a retired PSE&G technician, testified on behalf of Petitioner. (T 83-8 to 94-15). Sometime in 2003 or 2004, he entered Petitioner's basement at her request and found a wire attached to the bottom of Petitioner's circuit box running into a wall. (T 87-17 to 90-13). Mr. Smith testified that he could not determine what the diversionary wire was connected to on the other side of the wall. (T 89-22 to 90-4). In any event, he disconnected the wire during his visit. (T 87-21 to 87-23). Mr. Smith acknowledged that he is not a licensed electrician. (T 87-15 to 87-16)

PSE&G presented the testimony of a customer operations supervisor, Anthony Diaz. Because Petitioner was unsatisfied with two earlier investigations, Mr. Diaz and his manager, Mr. Daum, investigated Petitioner's diversion complaint on November 7, 2008. (T 13-11 to 14-11). Mr. Diaz stated that he checked Petitioner's gas and electric meters but did not find any diversion. Nonetheless, PSE&G authorized a \$973.02 credit to Petitioner in the interest of good customer service, which brought Petitioner's balance on her account to zero. (T 15-4 to 15-19; T 65-13 to 65-23).

John Duffy, a revenue integrity supervisor for PSE&G, testified that he conducted a diversion of service investigation at Petitioner's home on March 16, 2011. (T 26-4 to 26-18). He examined the electric meter outside the house as well as the main breaker and customer service panel inside the house. (T 27-23 to 29-9). He found no evidence of diversion with either the electric or gas meter. He described the pictures which he had taken as depicting areas where tampering is generally seen. He stated that none of the photographs showed any evidence of diversion. (T 28-8 to 39-9). Mr. Duffy further testified that PSE&G removed the electric and gas meters and tested them for accuracy. The result of the test showed that the electric meter was accurate and that Petitioner was being billed slightly less than the amount of electricity consumed by her. (T 32-5 to 34-4). With regard to the gas meter, the test showed that it was operating outside regulatory standards as it was registering above 2%. (T 36-18 to 37-24). As a result, Petitioner would receive a credit. (T 37-25 to 38-4). Mr. Duffy also testified that Petitioner's bills for gas and electric are well within normal range for comparable homes. (T 58-10 to 61-1).

Respondent's next witness was Edward B. Sullivan, manager of regulatory services. Mr. Sullivan noted that in December 2008 the gas meter was removed for the purpose of testing it. (T 69-25 to 73-7). Mr. Sullivan described the procedure for changing a gas meter as requiring Respondent to turn off all gas appliances and then after the meter is replaced, Respondent

needs to light the pilots and restore the service. However, when Respondent attempted to restore service, Petitioner's furnace did not turn on. (T 78-9 to 78-24). Respondent replaced a furnace part and to compensate Petitioner for the damage, she received a credit for \$339.00 to her account. (T 74-2 to 74-23).

Initial Decision.

On April 26, 2011, ALJ Sanders issued an Initial Decision, crediting the testimony of all witnesses. ALJ Sanders credited Mr. Smith's testimony about the diversionary wire which he pulled in 2003 or 2004, but concluded that the diversion ended in 2003 or 2004 and that Petitioner had not provided sufficient evidence to establish any diversion after that date. ID at 6. Significantly, the ALJ found that there was no evidence of diversion present at the time of Respondent's 2008 and 2011 investigation. ID at 5. ALJ Sanders also found that the electric meter was accurate and that a monthly electric bill of \$30 is not so high as to suggest diversion or inaccuracy. Ibid.

Regarding credits and adjustments posted to Petitioner's account, ALJ Sanders found the credits to be fair and reasonable. Specifically, the ALJ noted that Petitioner received a credit \$972.02¹ on November 14, 2008, which eliminated all amounts due and owing on the account. Ibid. Finding that Respondent's credit of \$58.79 for the fast gas meter was calculated based on the entire period that the meter was in service, the ALJ concluded that the credit was more than required by N.J.A.C. 14:3-4.6(c)(2) and N.J.A.C. 14:6-4.2. ID at 6. ALJ Sanders also found that Respondent adequately explained the furnace incident and that Petitioner was compensated for any damage caused by Respondent. ID at 5. Based on the record, the ALJ dismissed the matter with prejudice. ID at 6.

Exceptions

On or about May 2, 2011, Petitioner filed Exceptions, asserting that Respondent's witnesses had perjured themselves. Petitioner alleged that Exhibits R-1 and R-2 clearly show wires and pipes going from her home to an adjacent property. Petitioner reiterated her complaint regarding the lack of thoroughness of Respondent's investigation and her assertion that the credits to her account are proof that there is diversion. Petitioner's Exceptions also discussed testimony that was not presented at the hearing.

Reply to Exceptions

PSE&G urged the Board to adopt the Initial Decision without modifications because the undisputed record reflects that Petitioner did not provide sufficient evidence to establish any diversion in 2008 or 2011. Moreover, if there was any diversion in the past, Respondent noted that the ALJ had properly found that its credits to Petitioner's account were fair and dispositive. In regards to PSE&G's witnesses having perjured themselves, PSE&G asserted that ALJ Sanders found PSE&G's witnesses fully credible. Furthermore, Respondent stated that Petitioner had a fair opportunity to present her case and should not be permitted to present new evidence or allegations in her Exceptions. According, Respondent requested that the Board adopt the Initial Decision.

¹ The ALJ noted the credit as \$972.02. However, Exhibit R-7 shows that the credit was \$973.02.

DISCUSSION

After review and consideration of the entire record, the Board HEREBY FINDS that the findings and conclusions of the ALJ Sanders are reasonable and, accordingly, HEREBY ADOPTS them. The Board further FINDS that the Exceptions to the Initial Decision filed by the Petitioner are without merit.

Pursuant to N.J.A.C. 1:1-18.4 (b), 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;
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 Exceptions, or incorporated or referred to within Exceptions. Accordingly, the Board REJECTS the evidence which Petitioner referenced in her Exceptions which was not presented during the hearing.

Petitioner contends that Exhibits R-1 and R-2 establish diversion. N.J.A.C. 1:1-18.6(c) provides that an agency "may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record." Here, the ALJ had the opportunity to observe the demeanor of Respondent's witness, Mr. Duffy, as he testified and as he described Exhibits R-1 and R-2. The ALJ found Mr. Duffy credible and found that there was no evidence of diversion present during the 2011 investigation. Upon review of the record, the Board FINDS that the ALJ's determination regarding the credibility of Mr. Duffy was not arbitrary, capricious or unreasonable.

Similarly, the ALJ credited Mr. Diaz's testimony that there was no diversion present during the 2008 investigation. Petitioner's Exceptions do not warrant a different conclusion as Petitioner has merely reargued her position and testimony, which was fully considered by the ALJ. The record clearly reflects that ALJ Sanders conducted a full hearing, where Petitioner was afforded the opportunity to present testimony, submit documents into evidence and cross-examine the witnesses. Contrary to Petitioner's claim, the Board FINDS that she was afforded a fundamentally fair process in compliance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Therefore, the Board HEREBY FINDS that Petitioner's allegation of perjury is unsubstantiated and therefore must be rejected.

Upon careful review and consideration of the entire record, the Board HEREBY FINDS that the factual determinations and legal conclusions of ALJ Sanders are reasonable and based upon sufficient, competent, and credible evidence. Thus, the Board HEREBY ADOPTS the Initial Decision and HEREBY ORDERS Petitioner's complaint to be DISMISSED.

DATED: 6/15/11

BOARD OF PUBLIC UTILITIES
BY:



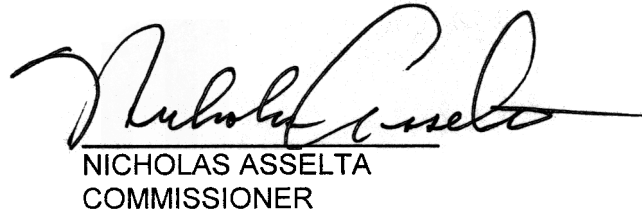
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

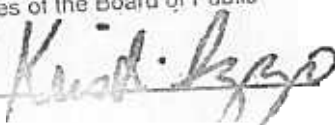


JOSEPH L. FIORDALISO
COMMISSIONER



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


SAVAGE v. PSE&G
BPU DOCKET NO. GC08100920U
OAL DOCKET NO. PUC 2705-10

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 2705-10

AGENCY DKT. NO. GC08100920U

SHIRLEY SAVAGE,

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC AND
GAS COMPANY,**

Respondent.

Shirley Savage, petitioner, pro se

**Sheree L. Kelly, Assistant General Regulatory Counsel, for respondent Public
Service Electric and Gas Company**

Record Closed: April 15, 2011

Decided: April 26, 2011

BEFORE LAURA SANDERS, Acting Director and Chief ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Shirley Savage (Petitioner or Savage) contests the accuracy of her gas and electric bills, on grounds of inaccurate metering and of failure to investigate theft of power. She also complains that the her utility provider, Public Service Electric and Gas

Company (PSE&G or respondent) has a policy of never providing prior notice of its investigations or documenting its entries into her home. PSE&G contends that it has twice conducted diversion of service investigations, both of which resulted in credits to Savage's bill and that its actions fall well within regulatory standards.

By letter received October 9, 2008, Savage complained to the Board of Public Utilities (BPU) regarding PSE&G's actions. Following an investigation in November and December 2008, a settlement dated December 11, 2008, was forwarded to petitioner. (R-8). The settlement included a credit of \$973.02. PSE&G on March 19, 2009, sought dismissal of the complaint. On April 13, 2010, the BPU transmitted the contested case to the Office of Administrative Law (OAL), where it was filed on May 19, 2010. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A hearing scheduled for March 7, 2011, was adjourned to allow PSE&G to investigate the petitioner's diversion complaint. The matter was then heard on April 8, 2011. The record was left open for a letter documenting the credit to be provided to Petitioner as a result of PSE&G's determination that her gas meter was operating outside of the regulatory limits. When the initial letter (marked R-9) was received at the OAL on April 12, 2011, the undersigned by letter of the same date sought clarification as to the calculations employed. A revised letter (marked R-10) having been received at the OAL on April 15, 2011, the record closed on that date.

FACTUAL DISCUSSION

Savage complains that she has been reporting diversions, over-billing, and unreliable metering since 2002. She testified, "I know something is happening in my home," because her bills are larger than common sense would show to be fair. She points out that she lives alone, and does not use air conditioning, a dishwasher, or even a washing machine. Her gas usage is limited to heat and hot water.

William F. Smith Sr., a retired PSE&G technician, testified that sometime in 2003 or 2004, he entered Savage's basement at her request, and noticing a wire attached to the bottom of her circuit box, pulled it out. He identified photographs (P-2 and P-4) as showing the wire where it had entered the breaker. The other side, he said, went into

the wall, and appeared to connect to something at the other end, although it was not possible to see what it connected to from inside the basement. He also rewired some overhead connections that fed up into the outlets in the living space above, fixing a problem with voltage upstairs. He acknowledged he is not a licensed electrician.

In support of her position, the petitioner offered a PSE&G field report indicating the presence of two employees to investigate theft of services on November 7, 2008, (P-1), a meter testing report from December 3 and 10, 2008, (P-7), police reports of a complaint by Savage of electric theft on September 4, 2006, (P-9), and of cable wire disconnection on November 20, 2007, (P-8).

Anthony Diaz, a customer operations supervisor with PSE&G, testified that he was one of the two people who investigated petitioner's diversion complaint on November 7, 2008. He acknowledged that petitioner was provided with the field report document only because she demanded a written report of the visit. Normally, he said, it was not the company practice to routinely provide such documentation. Diaz said they found no evidence of diversion; however, in the interests of good customer service relations, the company authorized a \$973.02 credit to petitioner.

John Duffy, revenue integrity supervisor for PSE&G, conducted the second investigation at petitioner's home, which occurred on March 16, 2011. He acknowledged that she received nothing in writing from the investigation until the hearing. He examined the electric meter outside the residence and found no evidence of tampering, at the meter, at the service drop above the meter, or anywhere below the meter. Additionally, inside the house, he examined the main breaker and the customer service panel, which also showed no signs of diversion. Duffy did recall seeing some wires that lead into a crawl space, but he did not see evidence that they connected to anything, or that they indicated any diversion was occurring.

According to Duffy, the company pulled the electric meter and tested it for accuracy. The electric meter was found to be working at 99.35% accuracy on a full load; 99.45% accuracy on a light load, for a weighted average of 99.37%. Duffy said

this means that petitioner is being billed for slightly less than the amount of electricity she uses.

With regard to the gas meter, Duffy said inspection of the piping showed no evidence of anyone having tapped into the flow. The gas meter also was pulled; and unlike the electric meter, was found to be operating outside regulatory standards. The meter was running at 102.77%—or more than the 2% regulatory limit, and as a result, the petitioner is entitled to a credit. Per the PSE&G letter of April 15, 2011, (R-10), in the period between placement of the meter on November 7, 2009, and the pulling of the meter on April 4, 2011, a total of 1703.197 therms of gas was used. Since the meter was registering 2.77% higher than 100% accuracy, an amount equal to 2.77% was calculated. This meant a reduction equal to 47.178 therms, or 2.77% of the usage over that period. Applying the PSE&G tariff rates to the therms produced a total credit of \$58.79.

With regard to whether the petitioner's bills are such that over-billing should be apparent, Duffy said the electric bill average of \$25 to \$30 a month is well within normal range. The gas bills, which averaged \$29.16 per month between May and November 2010, and \$218.25 in the December 2010 through March 2011 heating season, also fell within the usual range for a smaller home.

Edward B. Sullivan, manager, regulatory services, addressed a third incident that was the cause of unhappiness for the petitioner. She had demanded to know why the company meddled with her furnace, then billed her for work she did not request. Sullivan testified that at the time of the first diversion investigation, the company pulled the gas meter on December 3, 2008, for the purpose of testing it, which occurred on December 10, 2008. It was found to be operating at an accuracy level of 100.10%, which was sufficient. However, in order to change the meter, the technician had to first turn off all appliances using the gas. Once the new meter was in, the technician then went through the process of restarting the appliances. Unfortunately, however, the furnace refused to start, which prompted the changing out of a part. In the face of petitioner's complaints, the company eventually credited the \$339 to her account, and she received the new part for free.

Based upon the credible testimony from Smith, I **FIND** as **FACT** that he pulled a diversionary wire out of petitioner's meter sometime in 2003 or 2004. However, I **FIND** based on his testimony and that of Diaz, evidence of diversion was not present at the time of the 2008 investigation. For some reason not made clear in the hearing, petitioner believes PSE&G never gave her any credit in response to the November 2008 investigation. However, I **FIND** that the statement of her account (R-7) clearly shows a credit of \$972.02 on November 14, 2008, which eliminated all amounts due and owing on the account. Given that the entire electric bill from November 2007 through November 2008 equaled \$340.04, the credit approximated a full year of free electricity, plus about half the cost of the 2008 heating season.

Based upon the credible testimony, I further **FIND** that no evidence of diversion was present in 2011, and the electric meter, based upon the test, was accurate. Additionally, I **FIND** that a monthly electric bill of \$30 is not so high as to make apparent to any person with common sense that a diversion or inaccuracy is occurring. With regard to the gas meter, PSE&G has acknowledged that the meter was over-billing of petitioner by 2.77 percent, and she is due a credit. I **FIND** that the company had adequately explained the furnace incident, and that at any rate, petitioner received a new part for free.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:3-4.5(a) states that "each utility, shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months." N.J.A.C. 14:3-4.5(d) states that "a meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute."

Under N.J.A.C. 14:3-4.6(a) a meter registered fast by more than two percent, shall result in an adjustment of charges. If the date the meter first became inaccurate is

not known, and (for gas meters), the meter has not been in service for ten years, then the adjustment is calculated by taking half of the time period. (N.J.A.C. 14:3-4.6(c)2 and N.J.A.C. 14:6-4.2). Given that PSE&G here has utilized the entire period that the meter was in service, and not the fifty percent allowed by the regulations, I **CONCLUDE** that the credit for the inaccurate gas meter was more than required by the regulations

While I do credit Smith's testimony about the diversion that he ended sometime in 2003 or 2004, I **CONCLUDE** that petitioner has not provided sufficient evidence to establish any diversion after that somewhat nebulous date. N.J.A.C. 14:3-6.1(b) requires each utility to 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." Although a utility may choose to keep records for a longer period to facilitate compliance for calculating adjustments for meter errors, the regulation does not require that. Thus, the fact that PSE&G does not have records back farther than six years renders it impossible to determine exactly what happened. However, I am persuaded that the magnitude of the company's credit of \$972.02 in November 2008, coupled with the settlement document (R-8) amounted to a good faith settlement of that prior claim, as was the credit of \$339, providing free parts and labor for a furnace repair in December 2008

ORDER

As I can find no basis upon which to conclude that the company has operated outside of the regulations, I hereby **DISMISS** the matter with **PREJUDICE**.

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

April 26, 2011
DATE

Laura Sanders
LAURA SANDERS
Acting Director and Chief ALJ

Date Received at Agency:

April 26, 2011

Date Mailed to Parties:

APR 27 2011

/caa

WITNESSES

For Petitioner, Shirley Savage

Shirley Savage
William F. Smith, Sr.

For Respondent, Public Service Electric and Gas Company

Anthony Diaz
John Duffy
Edward B. Sullivan

EXHIBITS

For Petitioner, Shirley Savage

- PSE&G Account Investigation/Field Report dated November 7, 2008
- Photograph of board and wire connected
- Photograph of board and long connecting wire
- P-4 Photograph of bottom half of wire (connects to P-3 above)
- P-5 Photograph of wires disappearing into crawl space
- P-6 Photographs of wall depicting a possible drilling site (in 2004) and overhead wires leading to living space above
- Gas meter test document removal date December 3, 2008
- P-8 Report of call for service from Savage concerning cable wires to Camden Police dated November 20, 2007
- Report to Camden Police of call from Savage dated September 4, 2006, concerning illegal theft of her electricity.

For Respondent, Public Service Electric and Gas Company

Photograph of service drop below meter dated March 16, 2011

Photograph of service cable from 100 amp circuit breaker through wall into Savage residence dated March 16, 2011

Photograph of customer service panel taken at Savage residence, dated March 16, 2011

Photograph of gas meter at Savage residence dated March 16, 2011

Report of electric meter test dated March 17, 2011

Gas Meter test dated April 7, 2011

Statement of Electric and/of Gas Billing and Payments for Savage account dated November 8, 2007, through April 5, 2011

Letter confirming settlement of billing dispute by credit, dated December 11, 2008, to Shirley Savage from Edward B. Sullivan

Letter to Shirley Savage dated April 8, 2011, crediting \$34.49 for inaccurate gas meter

Letter to Shirley Savage dated April 15, 2011, crediting \$58.79 for inaccurate gas meter

Entity Type: Matter Related Firm Side: Client: On a Mailing List:
 Role: DAG Matter Side: Neither Billable: Record ID: 231322
 Matter Client:
 Report To:
 Party: Date Assigned: 01/18/2011

Sender: Prefix: First: Middle: Last: Suffix: Prof. Suffix:
 CAROLINE VACHIER, DAG

Parent Organization: Relationship to Parent: Department:

Primary Address: Addresses

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City/State/Zip: NEWARK NJ 07101
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