



Agenda Date: 12/14/11
Agenda Item: VIIIH

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue
Post Office Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

MARC HOLLOWAY,)
Petitioner)
)
V.)
)
NEW JERSEY NATURAL GAS COMPANY,)
Respondent)

ORDER OF EXTENSION

BPU DOCKET NO. GC10050329U
OAL DOCKET NO. PUC12383-11

(SERVICE LIST ATTACHED)

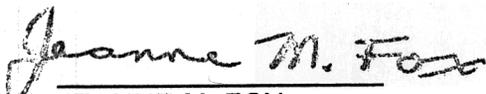
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on November 18, 2011; therefore the 45-day statutory period for review and the issuing of a Final Decision will expire on January 2, 2012. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision. The additional time is requested to allow sufficient opportunity for the Board to issue the Final Decision following a comprehensive review of the Initial Decision and the record below.

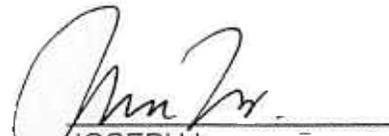
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until February 16, 2012.

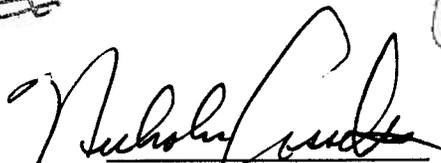
DATED: 12/15/11

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

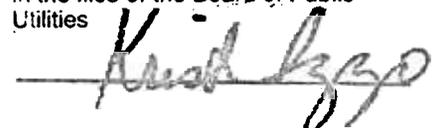

JEANNE M. FOX
COMMISSIONER


JOSEPH L.


NICHOLAS ASSELTA
COMMISSIONER

ATTEST: 

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



Date Board mailed Order to OAL: 12/16/11

cc. Service List Attached

DATED: 12/20/11


LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL ^{Exec} mailed executed Order to Board: 12/20/11

Date Board mailed executed Order to Parties: 12/20/11

MARC HALLOWAY

V.

NEW JERSEY NATURAL GAS COMPANY

BPU DOCKET NO. GC10050329U
OAL DOCKET NO. PUC12383-11

SERVICE LIST

Marc Holloway
226 Ardmore Avenue
Toms River, New Jersey 08757

Eileen F. Quinn, Esq.
NJR Services
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Newark, New Jersey 07101

CMS
E. Beslow
C. Vachier
DAG
R.P.A.
V. Haynes
D. Lee-Thomas
J. Ford-Wellons
R. Lambert



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

BPU MAILROOM
NOV 29 2011
RECEIVED

INITIAL DECISION ON REMAND

FAILURE TO APPEAR

PURSUANT TO N.J.A.C. 1:1-14.4

OAL DKT. NO. PUC 12383-11 (ON
REMAND PUC 7329-10)
AGENCY DKT. NO. GC10050329U

MARC HOLLOWAY,

Petitioner,

v.

NEW JERSEY NATURAL GAS

COMPANY,

Respondent.

FWP
12/1/11
RECEIVED
CASE MANAGEMENT
2011 NOV 30 AM 11:39
BOARD OF PUBLIC UTILITIES
REMARK, N.J.

Marc Holloway, petitioner, pro se

Eileen F. Quinn, Esq., for respondent

Record Closed: November 18, 2011

Decided: November 18, 2011

BEFORE ANA C. VISCOMI, ALJ:

In this matter, Mr. Holloway is disputing bills sent to him by New Jersey Natural Gas (NJNG). This matter was previously transmitted to the Office of Administrative Law (OAL) on June 9, 2010, for a hearing as a contested case, pursuant to N.J.S.A. 52:F-1 to -13 and N.J.S.A. 52:14B-1 to -15. It was scheduled for hearing ultimately on March 9, 2011, but as a result of Mr. Holloway's failure to appear, I issued an Initial Decision

Failure to Appear, pursuant to N.J.A.C. 1:1-14.4, which permitted *ex parte* proofs to be considered by me. The Board of Public Utilities thereafter considered an explanation submitted by Mr. Holloway, and on July 22, 2011, issued an Order on Remand, dated July 14, 2011. In that Order, the Board found evidence that it was the petitioner's intent to present his case as a result of the "curious yet plausible explanation" that he had forwarded to my attention after the closing of the record before me but which I had considered and rejected. The Board indicated on the fourth page of its Order on Remand that:

Petitioner is reminded, however, that in pursuing his claims, he is expected to comply with applicable procedural rules and 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).

Thereafter, the file was transmitted to the OAL by date of October 17, 2011. As a result, my secretary forwarded a letter to both counsel for New Jersey Natural Gas, Eileen F. Quinn, Assistant General Counsel, and to Mr. Marc Holloway at the address he provided to Board and the OAL -- 226 Ardmore Avenue, Toms River, New Jersey 08757. That letter, (C-1), dated October 19, 2011, indicated:

Dear Parties:

The above-captioned remanded matter has been assigned to me for hearing. I intend to conduct a plenary hearing in this matter on one of the following dates: November 9, 14, 15, 16 or 17, 2011.

Please advise, in writing, no later than November 1, 2011, of your availability on the above proposed hearing dates. Absent any written response by November 1, 2011, I will schedule the hearing on peremptory basis for November 9, 2011.

Ms. Quinn, responded by letter dated October 26, 2011

On November 1, 2011, the OAL Deputy Clerk received a phone call from someone representing herself as Mr. Holloway's secretary. The Deputy Clerk transferred the call to my secretary. I heard my secretary's discussion during this telephone call. My secretary advised me the individual identified herself as Mr.

Holloway's secretary. I heard my secretary then state that since Mr. Holloway is a pro se litigant; she is required to speak to him rather than through anyone else. My secretary advised that Mr. Holloway then spoke with her and inquired as to the status of his case. She had spoken to him before and thus was familiar with his voice. I then heard my secretary explain that he was a sent letter on October 19. My secretary advised that Mr. Holloway acknowledged receiving it but explained the letter did not tell him what to do. I heard my secretary state that the letter was self-explanatory and he should read and respond. She also told him that he had until that day, November 1, 2011, to respond and she provided him the fax number as he requested, although it is indicated on my letterhead. By facsimile of the same date, Mr. Holloway responded as follows (C-2):

Dear Judge Viscomi:

Please be advised that Mr. Holloway will be available on November 17th for the hearing of the above captioned matter.

Should you require further information please feel free to contact my office.

Sincerely,
Marc Holloway

The Clerk's office issued the Notice of Hearing on November 1, 2011, directed to ~~Marc Holloway at the Ardmore Avenue address and to Ms. Quinn, the Board of Public Utilities and the court reporting service, indicating that the hearing in this case would be held on November 17, 2011, 9:00 a.m., Office of Administrative Law, in Mercerville. (C-3). None of these notices, mailed through the United States Post Office, were returned as undeliverable.~~

At 9:00 a.m., on November 17, all parties, with the exception of Mr. Holloway, were present and ready to proceed. At 10:30 a.m. I asked Ms. Quinn to inquire of her office whether there was any message, call, or fax from Mr. Holloway to her office. Ms Quinn confirmed no such communication was received.

I also personally inquired of the OAL guard, Deputy Clerk and my office whether they received any phone calls, voice mail messages or faxes from Mr. Holloway regarding any difficulty in appearing at the OAL on November 17, 2011, to present his appeal. All of these individuals responded no such communication had been received.¹ Although OAL policy requires the judge wait one half-hour prior to dismissing the parties and witnesses in the event of a failure to appear by another party, in this matter, I waited one hour and forty-five minutes. At 10:45 a.m., I released Ms. Quinn, her witness, Patrick Hughes, and the court reporter.

In issuing the Remand Order, the Board was concerned that Mr. Holloway had expressed an intention to pursue this action in his explanation of non-appearance at the first scheduled hearing date. The matter, once remanded, was scheduled at a date selected by Mr. Holloway as confirmed in his correspondence of November 1, 2011. (C-2). He clearly received my communication to his Ardmore address and responded. An official Notice of Hearing was mailed, as required, to the address he provided and not returned by the US Post Office as undeliverable. The Board indicated in its Remand Order that the OAL did not contact the petitioner on the date of the first scheduled hearing or the day after to inquire of his whereabouts. It is neither the policy nor practice of the OAL to contact any party to inquire as to a non-appearance. Certainly exigent circumstances, such as inclement weather or significant traffic-related issues, are treated differently by the OAL. No such exigent circumstance presented itself in this matter. The Board also indicated in its Remand Order that petitioner is expected to comply with OAL applicable procedural rules. The rules require the non-appearing party to advise the judge of any difficulty in appearing for a scheduled proceeding. N.J.A.C. 1:1-14.4. Any difficulty expressed before the hearing would have resulted in a rescheduling of the hearing. No such communication was received at any time prior to the scheduled hearing date.

Having now held this matter for one day, before taking any action and having not received any explanation within that one day as required by N.J.A.C. 1:1-14.4, I hereby direct the Clerk to return this matter to the Board of Public Utilities for appropriate

¹ The Deputy Clerk also confirmed no communication from Mr. Holloway with her respective staff of five clerks.

disposition. I also adopt herein, by reference, my prior Initial Decision – Failure to Appear of April 25, 2011, wherein the respondent proceeded ex parte on the proofs, pursuant to N.J.A.C. 1:1-14.4. Petitioner’s appeal is hereby **DISMISSED** for failure to appear and I **ORDER** petitioner pay the respondent NJNG a total of \$2,758.05. In the event petitioner submits an untimely explanation of his non-appearance for this second scheduled hearing, I would recommend the Board require petitioner pay respondent’s counsel and witness one hour and forty-five minutes of their respective waiting time at this scheduled hearing, upon the submission of the appropriate affidavits.

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.

November 18, 2011 _____

DATE



ANA C. VISCOMI, ALJ

Date Received at Agency:

11-18-11

Date Mailed to Parties:

/lam

NOV 22 2011

LIST OF EXHIBITS

- C-1 October 19, 2011, correspondence to parties to schedule hearing
- C-2 November 1, 2011, response from petitioner regarding availability
- C-3 November 1, 2011, OAL Notice of Hearing scheduling matter for November 17, 2011