



Agenda Date: 1/18/12  
Agenda Item: VIIG

**STATE OF NEW JERSEY**  
Board of Public Utilities  
44 South Clinton Avenue, 9th Floor  
Post Office Box 350  
Trenton, NJ 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

LARRY J. YATES, Petitioner	)	ORDER OF EXTENSION
	)	
V.	)	
	)	
PUBLIC SERVICE ELECTRIC AND GAS CO., Respondent	)	BPU DOCKET NO. EC10120885U OAL DOCKET NO. PUC01958-11

(SERVICE LIST ATTACHED)

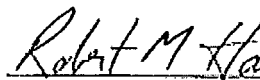
BY THE BOARD:

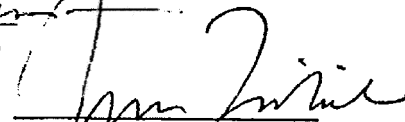
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on December 22, 2011; therefore the 45-day statutory period for review and the issuing of a Final Decision will expire on February 6, 2012. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to appropriately review the record.

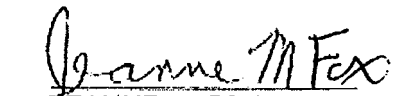
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until March 22, 2012.

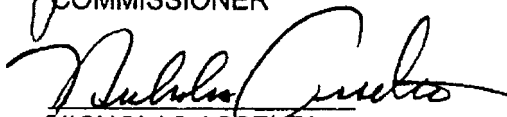
DATED: 1/18/12

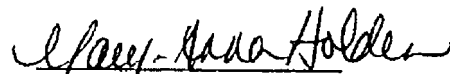
BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
JEANNE M. FOX  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

Date Board mailed Order to OAL: 1/19/12

cc: Service List Attached

DATED: 1/19/12

Laura Sanders  
LAURA SANDERS, ACTING  
DIRECTOR & CHIEF  
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 1/19/2012

Date Board mailed executed Order to Parties: 1/23/12

LARRY J. YATES

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BPU DOCKET NO. EC10120885U

OAL DOCKET NO. PUC 01958-11

SERVICE LIST

Larry J. Yates  
1402 Teaneck Road, #222  
Teaneck, New Jersey 07666

Sheree L. Kelly, Esq.  
PSEG Services Corporation  
80 Park Plaza – T5G  
Newark, New Jersey 07102-4194

Eric Hartsfield, Director  
Julie Ford-Williams  
Division of Customer Assistance  
Board of Public Utilities  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Veronica Beke, DAG  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

DMG  
Bestow  
DAG  
RPA  
Vachier  
Haynes  
Lee-Thomas  
Ford-Williams  
Sambet



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

RECEIVED

**INITIAL DECISION**

OAL DKT. NO. PUC 01958-11

AGENCY DKT. NO. EC10120885U

**LARRY J. YATES,**

Petitioner,

v.

**PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,**

Respondent,

RECEIVED  
MANAGEMENT  
2011 DEC 22 AM 10:04  
BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

**Larry J. Yates**, petitioner, appearing pro se

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

Record Closed: December 16, 2011

Decided: December 22, 2011

BEFORE **KIMBERLY A. MOSS**, ALJ.

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Larry J. Yates (petitioner or Yates), filed a petition with the Board of Public Utilities (BPU) on November 29, 2010, regarding a billing dispute. Petitioner is disputing delivery charges and next charges. The matter was transmitted to the Office of Administrative Law (OAL) and filed on February 18, 2011. On April 15, 2011, petitioner filed a reply in opposition to the BPU's motion to dismiss his third-party claim. In the

reply he also filed a motion to strike respondent, Public Service Electric and Gas's (PSE&G) answer because it was filed out of time. Due to inadvertence that count of the motion was not addressed in the prior Order. On June 8, 2011, PSE&G filed opposition to petitioner's motion to strike the answer, as well as filing a motion for summary decision. Yates filed a response to PSE&G's motion for summary decision on June 23, 2011. Included in Yates's response was a motion to compel discovery. On July 15, 2011. Ordered that PSE&G's answer was timely filed. In addition PSE&G's motion for summary decision was partially granted. The only open issue remaining was whether PSE&G accurately billed Yates for the distribution charges. A hearing was held on December 5, 2011. I required PSE&G to submit documents regarding its tariff. This document was submitted on December 6, 2011. Yates had until December 16, 2011, to submit a reply to PSE&G's tariff submissions. Yates did not file a reply to PSE&G's tariff submissions. I closed the record on December 16, 2011.

### **FACTUAL DISCUSSION**

I **FIND** the following are undisputed **FACTS** in this case.

Yates is a gas and electric customer of PSE&G.

### **Testimony**

#### **Larry Yates**

Yates testified that he believes that his delivery charges were not accurate because the delivery charge was more than fifty percent of the bill. He submitted bills that showed the service charges were \$2.46 and \$2.52, both of which are above the \$2.43 listed in the tariff, Original Sheet 93, with an effective date of June 10, 2010. He did not receive an explanation of what the service charge was until September 2011. He never received notification of the tariff.

Brian Hart

Brian Hart (Hart) is a customer operations supervisor in the billing department of PSE&G. He is familiar with the Yates account. The service charge is a component of the delivery charge. Hart stated that the PSE&G is allowed to charge an additional three cents on the service charge as a capital-adjustment charge. The tariff Original Sheet Number 66 Electric Rate Schedule allows for this charge. This three-cent capital-adjustment charge is a constant charge. There are also fluctuation charges.

Respondent submitted a document entitled "First Revised Sheet No. 66 Superseding Original Sheet No. 66." This document, which has an effective date of July 24, 2011, allows a capital-adjustment charge of nine cents per month.

**FIND** the following are the **FACTS** in this case:

The service charge is component of the delivery charge. Original Sheet No. 66 of PSE&G's electrical tariff, with the effective date of June 7, 2010, allows PSE&G to charge an additional three cents per month for capital-adjustment charges. The First Revised Sheet No. 66 Superseding Original Sheet No 66 of the PSE&G electrical tariff, with the effective date of July 24, 2011, allows PSE&G to charge an additional nine cents per month for capital adjustment charges.

**LEGAL ANALYSIS AND CONCLUSION**

In Essex County Welfare Board v. New Jersey Bell Telephone Company, 126 N.J. Super. 417 (App. Div.1974), the Court stated:

It is well established that a tariff required by law to be filed by a telephone company is not a mere contract; it is the law. Carter v. American Tel. & Tel. Co., 365 F.2d 486, 496 (5 Cir. 1966), cert. den., 385 U.S. 1008, 87 S. Ct. 714, 17 L. Ed. 2d 546 (1967); Shehi v. Southwestern Bell Tel. Co., 382 F.2d 627, 629 (10 Cir. 1967). As such, it is binding upon subscribers whether the customer actually knows of the regulation or not. Warner v. Southwestern Bell Tel. Co., 428

S.W. 2d 596 (Mo. Sup. Ct. 1968); Alcazar v. Southwestern Bell Tel. Co., 353 S.W. 2d 933, 936 (Tex. Civ. App. 1962).

The tariff that was filed by PSE&G allows it to charge residential customers for delivery and distribution charges. The tariff has the effect of law. Original Sheet No. 66 of the PSE&G electrical tariff with the effective date of June 7, 2010, allowed PSE&G to charge capital adjustment charges of an additional three cents per month. First Revised Sheet No. 66 Superseding Original Sheet No. 66, with an effective date of July 24, 2011, allows PSE&G to charge capital adjustment charges of an addition nine cents per month.

I **CONCLUDE** that petitioner did not prove by a preponderance of the evidence that his services charges were inaccurately billed because PSE&G billed petitioner in accordance with its tariff.

**ORDER**

It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

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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, 44 South Clinton Avenue, P.O. BOX 350 Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 22, 2011



\_\_\_\_\_  
DATE

\_\_\_\_\_  
**KIMBERLY A. MOSS, ALJ**

~~Date Received at Agency:~~

Date Mailed to Parties:

ljb  
\_\_\_\_\_



**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

David Hart

**EXHIBITS**

**For Petitioner:**

- P-1 May 2011 PSE&G Billing Statement  
Original Sheet No. 93 PSE&G Electrical Tariff
- P-3 January 2011 PSE&G Billing Statement
- P-4 February 2011 PSE&G Billing Statement  
March 2011 PSE&G Billing Statement  
April 2011 PSE&G Billing Statement  
May 2011 PSE&G Billing Statement  
July 2011 PSE&G Billing Statement  
August 2011 PSE&G Billing Statement
- P-10 October 2011 PSE&G Billing Statement  
September 2011 PSE&G Billing Statement

**For Respondent:**

- R-1 Original Sheet No. 66 of the Electrical Tariff
- R-2 First Revised Sheet No. 66 Superseding Original Sheet No. 66