



Agenda Date: 1/23/13  
Agenda Item: 7A

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

CUSTOMER ASSISTANCE

SUREDA A. TURNER, Petitioner	)	ORDER ADOPTING
	)	INITIAL DECISION
	)	
V.	)	
	)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondent	)	BPU DOCKET NO. GC12070701U
	)	OAL DOCKET NO. PUC 12137-12

**Parties of Record:**

**Sureda A. Turner**, Petitioner, appearing pro se, failed to appear  
**Sheree Kelly, Esq.**, appearing on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:

**STATEMENT OF THE CASE**

On July 26, 2012, Sureda A. Turner (Petitioner) filed a petition with the Board of Public Utilities ("Board") disputing the accuracy of an April 2012 \$1,885.35 utility bill from Public Service Electric and Gas Company (PSE&G or Respondent) for gas and electric service at her Irvington, New Jersey apartment.<sup>1</sup> Petitioner alleged that the estimated bill overstated her usage and that the outstanding bill prevented her from obtaining utility service from PSE&G at her new residence in Newark, New Jersey.

PSE&G filed an answer on August 28, 2012, denying Petitioner's allegations and asserting that Petitioner had been properly billed in accordance with the terms, conditions and rate schedules set forth in its Board approved Tariff, and that its actions were consistent with New Jersey statutes and Board regulations. PSE&G asked that the petition be dismissed for failure to state a claim upon which relief can be granted.

After receipt of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law (OAL) for hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to 15 and N.J.S.A. 52: 14F-1 to 13. The dispute was assigned to Administrative Law Judge Kimberly A. Moss (ALJ Moss).

<sup>1</sup> At the time the petition was filed, Petitioner had moved from the Irvington address to Newark, New Jersey.

A telephone prehearing conference was held on September 25, 2012, at which time ALJ Moss scheduled a status conference on October 18, 2012. ALJ Moss noted in her Initial Decision her difficulty reaching Petitioner for the September 25, 2012 conference at the telephone number designated by Petitioner, and again in reaching Petitioner prior to the October 18, 2012 status conference. At the conclusion of the October 18, 2012 status conference, attended by Petitioner, ALJ Moss scheduled an in-person conference on November 27, 2012, for which Petitioner was noticed verbally and by mail. Despite receiving notice, Petitioner failed to attend the November 27, 2012 conference or to subsequently contact the court concerning her absence. ALJ Moss closed the record on November 27, 2012 and on December 10, 2012, issued her Initial Decision dismissing the petition for lack of prosecution. Neither party filed exceptions.

### **DISCUSSION AND FINDINGS OF LAW**

For the reasons that follow, the Board **ADOPTS** the Initial Decision of ALJ Moss in its entirety and dismisses the petition.

In dismissing the petition, ALJ Moss relied upon N.J.A.C. 1:1-14.4(a) which provides that if, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge shall...direct the Clerk to return the matter to the transmitting agency for appropriate disposition pursuant to N.J.A.C. 1:1-3.3(b) and (c).

N.J.A.C. 1:1-3.3(b) reads:

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2

In reaching her decision, ALJ Moss reasoned that Petitioner was duly informed of the November 27, 2012 status conference by phone on October 18, 2012, and by mail in a notice sent to her on October 19, 2012. Despite being notified, Petitioner did not appear nor subsequently contact the court.

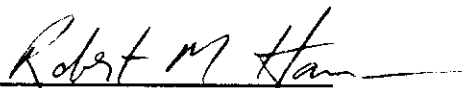
It is important to note that N.J.A.C. 1:1-3.3(b) and N.J.A.C. 1:1-14.4(a) require that the judge hold the matter for one day before taking any action. In this matter however, the record was closed on November 27, 2012, the same day that Petitioner was scheduled to appear at the status conference, rather than one day later. That being said, the Board is confident that this oversight should not impact its decision in this case. N.J.A.C. 1:1-1.3 provides for the relaxation of procedural rules in instances where it would not result in unfairness or injustice. In this matter, both fairness and justice were satisfied. First, there is no indication that the Petitioner contacted the court on November 28, 2012, (one day after she missed the settlement meeting) or at any time after that. Second, although Petitioner was duly served with the Initial Decision, which expressly notifies the parties of their right to file exceptions to the Initial Decision within 13

days of receipt of the decision, neither Petitioner nor Respondent filed any. Petitioner was properly notified of the settlement conference, served with the Initial Decision and given ample opportunity to respond to the adverse ruling, but chose not to. Under those circumstances, the one day oversight outlined above had no bearing on Petitioner's due process and the Board hereby relaxes that requirement in his action.


Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition of Sureda A. Turner be **HEREBY DISMISSED**.

DATED: 1/23/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

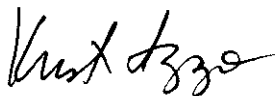
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

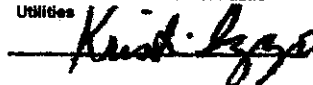
  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



SUREDA A. TURNER, Petitioner

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY, Respondent

BPU DOCKET NO. GC12070701U

OAL DOCKET NO. PUC 12137-12

SERVICE LIST

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*and 12/14/12*

RECEIVED  
2012  
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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

REC'D  
2012 DEC 13 PM 3 50  
NJ OPU  
CASE MANAGEMENT

**INITIAL DECISION**  
OAL DKT. NO. PUC 12137-12  
AGENCY DKT. NO. GC1207070164

**SUREDA A. TURNER,**  
Petitioner,  
v.  
**PUBLIC SERVICE ELECTRIC  
AND GAS COMPANY,**  
Respondent.

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**Sureda A. Turner, pro se, failed to appear**

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

Record Closed: November 27, 2012

Decided: December 10, 2012

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, Sureda A. Turner (Turner or petitioner) filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Public Service Electric and Gas Company (PSE&G) for services provided to 204 South Munn Avenue, Irvington, New Jersey and 66 Lindsey Avenue, Newark, New Jersey. On September 6,

OAL DKT. NO. PUC 12137-12

2012, 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 pre-hearing was conducted on September 25, 2012. Prior to the conference I had difficulty reaching Turner by phone. Once I reached petitioner the pre-hearing conference began. Turner provided a phone number where she could be reached during the pre-hearing conference. A status conference was scheduled for October 18, 2012. Once again I had difficulty reaching petitioner by phone. At the status conference I scheduled an in-person conference for November 27, 2012. Petitioner failed to appear for the conference.

#### **FINDINGS OF FACT**

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

On two separate occasions I have had difficulty reaching petitioner by phone. On September 25, 2012, it took over half an hour to reach petitioner by phone. On October 18, 2012, I again had difficulty reaching petitioner by phone. During the status conference of October 18, 2012, an in-person conference was scheduled for November 27, 2012, at 11:00 a.m. Petitioner was sent a notice of the in-person conference on October 19, 2012. Petitioner failed to appear for the conference. To date, petitioner has not attempted to contact me to explain her failure to appear.

#### **CONCLUSIONS OF LAW**

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 nonappearance within one day. Petitioner was informed during the October 18, 2012 status conference and by notice dated October 19, 2012 that an in person conference was scheduled for November 27, 2012, yet she failed to appear for the conference.

OAL DKT. NO. PUC 12137-12

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

**ORDER**

It is **ORDERED** that Turner'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.


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

OAL DKT. NO. PUC 12137-12

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.

12-10-12  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:



Date Mailed to Parties:

DEC 11 2012

DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

ljb



**APPENDIX**

1. Notice of Pre-Hearing Conference of September 25, 2012, dated September 18, 2012
2. Notice of Status Conference of October 18, 2010, dated September 25, 2012
3. Notice of In-Person Status Conference of November 27, 2012, dated October 19, 2012