



Agenda Date: 2/19/14
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

VISHINDAS HARJANI,)	ORDER ADOPTING INITIAL
Petitioner,)	DECISION AND MODIFYING
)	IN PART
V.)	
)	
ATLANTIC CITY ELECTRIC COMPANY,)	BPU Docket No. EC13040348U
Respondent)	OAL Docket No. PUC 9396-13

Parties of Record:

Vishindas Harjani, pro se
Renee E. Suglia, Esq., Atlantic City Electric Company

BY THE BOARD:

STATEMENT OF THE CASE

Vishindas Harjani (“Petitioner”) filed a petition with the Board of Public Utilities (“Board”) on April 24, 2013 against Atlantic City Electric Company (“Respondent”) over a billing dispute with third party supplier (“TPS”) Public Power Company (“Public Power”). Specifically, Petitioner sought correction for alleged billing overcharging and monetary damages for torment and emotional distress suffered by family members. On June 24, 2013, this matter was transmitted by the Board to the Office of Administrative Law (“OAL”) for hearing as a contested matter 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”) Damon G. Tyner, who held a hearing on September 6, 2013. ALJ Tyner submitted his Initial Decision in this matter to the Board on October 24, 2013.

BACKGROUND AND PROCEDURAL HISTORY

Petitioner had been a customer of Respondent, receiving electric service. On December 9, 2010, Respondent notified Petitioner by letter that it had been notified that Petitioner had selected Public Power as his new electric generation supplier. The letter informed Petitioner that he would continue to receive one bill from Respondent that would reflect both Respondent’s distribution charges and Public Power’s commodity related charges. Petitioner initially complained to the Board that Public Power overcharged his account for service. On September

28, 2011, Respondent again notified Petitioner by letter that it had been notified that Petitioner had selected Discount Energy Group LLC ("Discount Energy Group") as his new electric generation supplier. Petitioner ended the agreement with Discount Energy Group within a month and returned to Respondent for all services.

With the assistance of the Board, Petitioner negotiated a settlement with Public Power over his initial complaint of overcharging. As noted by a letter from the Board dated August 15, 2012, the total amount billed to Petitioner by Public Power was \$827.00 but to resolve Petitioner's complaint, Public Power issued Petitioner a check in the amount of \$413.50. On September 3, 2012, Petitioner received a letter from Public Power confirming that Petitioner's account had been closed and all debts had been resolved.

On April 19, 2013, Petitioner filed his petition against Respondent seeking a correction to the alleged overcharging and monetary compensation for torment and emotional distress suffered by his family members. On June 3, 2013, Respondent filed its Answer arguing Public Power is a separate and independent company not affiliated with Respondent and Petitioner was compensated by Public Power.

On September 6, 2013, a hearing was held before ALJ Tyner. At the hearing, Petitioner testified on his own behalf and senior analyst Agnes Carpenter testified on behalf of Respondent. Respondent moved to dismiss the petition for two reasons. First, Respondent argued the OAL did not have jurisdiction because Petitioner was seeking damages. Second, Respondent argued that Petitioner failed to state a claim because Petitioner's claims were directed at Public Power and not Respondent and Petitioner had entered into a settlement with Public Power.

On October 24, 2013, ALJ Tyner issued his Initial Decision. ALJ Tyner granted Respondent's motion to dismiss. (Initial Decision at 4). ALJ Tyner found that Petitioner failed to state a claim upon which he can recover damages against Respondent. (Id. at 3). ALJ Tyner concluded that even if Petitioner had a colorable claim against Respondent, Petitioner would be barred from seeking damages against Respondent under the doctrine of accord and satisfaction and estoppel because Petitioner entered into a settlement with Public Power for the same or similar damages. (Id. at 3-4). Lastly, ALJ Tyner stated that the Board has no jurisdiction over the third party supplier, Public Power. (Id. at 2-3).

On November 13, 2013, Petitioner untimely filed Exceptions to the Initial Decision.¹ In the Exceptions, the Petitioner alleges that: (1) the Board erred by failing to transmit this matter to the OAL against both Respondent and Public Power; and (2) Respondent and Public Power are colluding together to issue fraudulent bills. Respondent did not file a response.²

By previous Orders of Extension, the period for issuing a Final Decision was extended to March 10, 2014.

¹ Exceptions must be filed with the Board within 13 days from the date the initial decision is mailed to the parties. N.J.A.C. 1:1-18.4.

² It is unclear from the record whether Respondent was served a copy of Petitioner's exceptions.

DISCUSSION AND FINDINGS OF LAW

Upon careful review and consideration of the record, the Board **HEREBY FINDS** that the findings and conclusions of ALJ Tyner are reasonable, with the exception of ALJ Tyner's findings on the Board's jurisdiction over TPS.

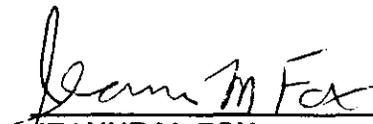
In the Initial Decision, ALJ Tyner stated that the Board does not maintain jurisdiction over the TPS, Public Power. That portion of the Initial Decision is in error. Under N.J.A.C. 14:4-1.2, TPS are "electric power suppliers" or "gas suppliers" and thus must be licensed by the Board pursuant to N.J.A.C. 14:4-5. Certain aspects of TPS conduct are subject to Board regulation under Retail Choice Consumer Protection, including provisions prohibiting customer slamming under N.J.A.C. 14:4-2; imposing advertising standards under N.J.A.C. 14:4-7.3; and imposing marketing standards under N.J.A.C. 14:4-7.4. To clarify the misstatement in the Initial Decision, the Board **HEREBY MODIFIES** the Initial Decision in part to state that the Board has jurisdiction over TPS to insure that they qualify to provide service in the State and that their conduct conforms to stated consumer protection standards. However, the Board does not regulate the prices charged by the TPS as the provision of electric generation service and gas supply service are competitive services. N.J.S.A. 48:3-51, 3-56 and 3-58.

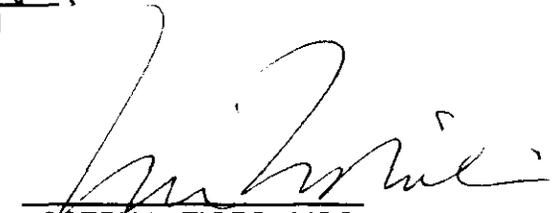
Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in part, **HEREBY MODIFIES** the Initial Decision in part to clarify the Board's jurisdiction over TPS, and **ORDERS** that the petition of Vishindas Harjani be **HEREBY DISMISSED**.

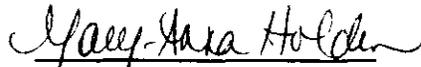
DATED: 2/19/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

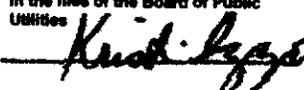

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
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


VISHINDAS HARJANI

V.

ATLANTIC CITY ELECTRIC COMPANY

BPU DOCKET NO. EC13040348U

OAL DOCKET NO. PUC 9396-13

SERVICE LIST

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PROCEDURAL HISTORY

The petitioner requested a hearing and the matter was filed at the OAL on July 2, 2013, to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13. The matter was heard on September 6, 2013, and the record closed.

FACTUAL DISCUSSION

The facts presented by this matter are straightforward. Petitioner was a customer of the respondent, receiving electric services. On December 9, 2010, respondent notified petitioner in a written correspondence that they had received notice that petitioner desired to change his electric supplier to a third party provider known as Public Power Company. (R-3). Petitioner was advised that respondent would continue to be the electric distributor, and that future billings would reflect one bill with two billers, respondent as the distributor and Public Power Company as the supplier. Notably, respondent is a utility which is regulated by the State of New Jersey Board of Public Utilities (BPU), whereas the BPU does not maintain jurisdiction over the practices of Public Power Company, a private entity.

In this matter, petitioner initially alleges that Public Power Company fraudulently changed his service without his permission. Whether or not this in fact did occur, petitioner does not challenge that his dispute, billing or fraudulently changing his service is with Public Power Company. He acknowledges such on the record. Additionally, petitioner also seemingly settled his dispute with Public Power Company when he negotiated a settlement, with the assistance of the BPU, and cashed a check in the amount of \$413.50, as demonstrated by a letter dated August 15, 2012. (R-1).

Further, in paragraph 3 of petitioner's counterclaim, dated June 10, 2013, he states:

THE ONLY BIT OF TRUTH SPOKEN BY THE
RESPONDENT'S ATTORNEY IS WHERE IN PARA NO. 8
OF HER ANSWER SHE STATES THAT "ANY AND ALL

DAMAGES ALLEGED TO HAVE BEEN SUSTAINED BY THE PETITIONER WERE CAUSED SOLELY BY THE NEGLIGENCE OF AN INDEPENDENT AND/OR INTERVENING PARTIES OR INSTRUMENTALITIES OVER WHICH ACE HAS NO CONTROL OR NO DUTY TO CONTROL WHICH IS WORTH TO BE NOTED.

On September 3, 2012, petitioner received a letter confirming that his account with Public Power Company had been closed. Petitioner then entered into a new agreement with another third party supplier, Discount Energy Group, to be his electric supplier. This agreement was ended within the month and petitioner returned to respondent for all of his services.

On more than one occasion during the proceeding, petitioner affirmatively indicated that his dispute was with the unregulated, third party provider, Public Power Company. However, he stated that he was seeking damages for pain and suffering from respondent for not assisting him with his dispute against Public Power Company.

Accordingly, respondent made a Motion to Dismiss for failure to state a claim at the conclusion of the petitioner's case.

Based on the foregoing, I **FIND** that petitioner has failed to state a claim against respondent.

I further **FIND** that petitioner accepted a cash settlement in the amount of \$413.50 from the third party provider.

Lastly, I **FIND** that this tribunal has no jurisdiction over the third party provider, Public Power Company.

CONCLUSION

Based on the foregoing, I **CONCLUDE** that petitioner has failed to state a claim, upon which he can recover damages, against the respondent. I further **CONCLUDE** that even if petitioner had a colorable claim against the respondent, petitioner would be

barred from seeking damage due to the principles of accord and satisfaction and estoppels, since petitioner entered into a settlement with another entity for the same or similar damages.

ORDER

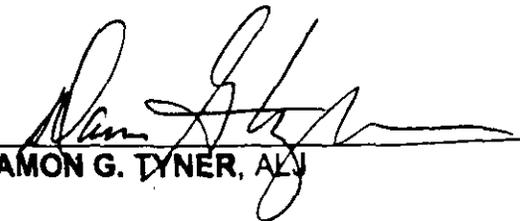
I **ORDER** that the respondent's Motion to Dismiss be **GRANTED** and that this matter be **DISMISSED**.

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, 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.

10-17-13
DATE


DAMON G. TYNER, ALJ

Date Received at Agency:

10-17-13

Date Mailed to Parties:

10/22/13

/sjd

WITNESSES AND DOCUMENTS IN EVIDENCE

WITNESSES

For Petitioner:

Vishindas Harjani

For Respondent:

Agnes Carpenter, Senior Analyst

EXHIBITS

For Petitioner:

P-1 Letter, Public Power to Harjani, 9/3/12

For Respondent:

R-1 Letter, Board of Public Utilities to Harjani, 8/15/12

R-2 Harjani Letter to the Editor, 8/28/13

R-3 Letter verifying change of service to Public Power Co., 12/9/10

R-4 Letter verifying change of service to Discount Energy Group, 9/28/11