



Agenda Date: 3/18/15
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

CARLOS FERNANDES,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	BPU DOCKET NO. EC14020189U
Respondent)	OAL DOCKET NO. PUC 07820-14

Parties of Record:

Carlos Fernandes, pro se¹
Alexander C. Stern, Esq., for Respondent, Public Service Electric and Gas Company

BY THE BOARD²:

On or about January 13, 2014, Carlos Fernandes ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a hearing disputing the billing charges of three Public Service Electric and Gas Company ("Respondent") accounts. The Board transmitted this matter to the Office of Administrative Law ("OAL") on June 25, 2014 for hearing as a contested case. The matter was assigned to Administrative Law Judge ("ALJ") Leland S. McGee who conducted three telephone prehearing conferences on August 25, September 14 and September 22, 2014, and scheduled and noticed a hearing date for February 17, 2015.

On the scheduled hearing date, the Petitioner did not appear and did not provide an explanation of the non-appearance. Respondent appeared with his witness and was prepared to proceed. Several attempts to contact Petitioner regarding the hearing were made, but to no avail. Craig Hoogstra, Esq., former counsel for Petitioner, represented to the Court that it was not until 10:00 a.m. on the day of the hearing that Petitioner contacted him by telephone and, in effect, "fired" counsel. Respondent requested a dismissal of the case with prejudice.

¹ On February 17, 2015, Craig Hoogstra, Esq., (Miller, Meyers & Corbo), appeared on the record for Petitioner and warranted to the Court that he was no longer retained as Counsel for Petitioner.

² Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

N.J.A.C. 1:1-14.4(a) provides, in pertinent part:

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).

The ALJ concluded that there was no good cause for Petitioner's failure to appear on February 17, 2015. The ALJ held the matter for twenty-four (24) hours pursuant to N.J.A.C. 1:1-14.4(a), and on February 19, 2015 dismissed the matter for lack of prosecution. The decision was filed with the Board on the same date.

N.J.A.C. 1:1-3.3(b) and (c) provides:

(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 Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above.

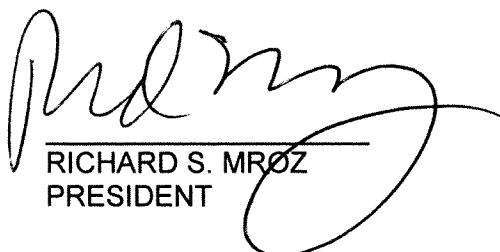
The Board notes that while Petitioner's attorney was relieved of his representative responsibilities, he appeared at the February 17, 2015 hearing and warranted to the court that he would reach out to Petitioner the following day to explain his remedies. At this time, it is the Board's understanding that Petitioner was notified of the February 17, 2015 hearing, and chose not to file any exceptions to the Initial Decision, and no correspondence from Petitioner has been received by the Board explaining the non-appearance.

Accordingly, the Board **HEREBY FINDS** that the Petitioner failed to appear at a hearing scheduled for February 17, 2015, and did not contact the ALJ or the Board with an explanation as required by the rules. Therefore the Board **HEREBY AFFIRMS** the Initial Decision in its entirety and the Petition is **HEREBY DISMISSED**.

The effective date of this Order is March 27, 2015.

DATED: 3/18/15

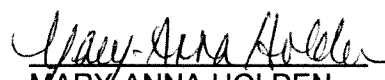
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER

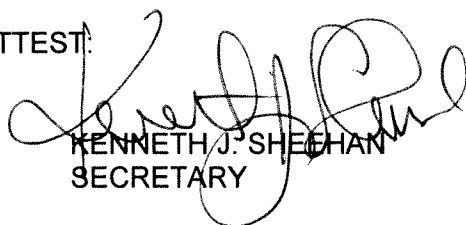


MARY-ANNA HOLDEN
COMMISSIONER



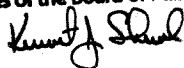
DIANNE SOLOMON
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
SECRETARY

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



CARLOS FERNANDES
Petitioner

v.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
Respondent

BPU DOCKET NO. EC14020189U
OAL DOCKET NO. PUC07820-14

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED

FEB 17 2015

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. PUC 07820-14

AGENCY DKT. NO. EC14020189U

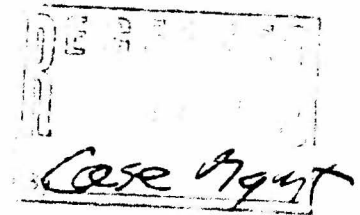
CARLOS FERNANDES,

Petitioner,

v.

PUBLIC SERVICE ELECTRIC AND GAS CO.,

Respondent.



Craig Hoogstra, Esq. for petitioner, (Miller, Meyers & Corbo, attorneys)

Alexander C. Stern, Esq., appearing for respondent

Record Closed and Decided: February 17, 2015

BEFORE LELAND S. McGEE, ALJ

On or about December 2, 2011, Carlos Fernandes filed a petition with the Board of Public Utilities disputing the billing charges of three Public Service Electric and Gas Co. (PSE&G) accounts. This matter was transmitted to the Office of Administrative Law (OAL), where it was filed on June 25, 2014, for a hearing pursuant to N.J.S.A. 52:154B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On August 25, 2014, a telephone prehearing conference was held and a hearing date was determined. Additional telephone conferences were held on September 14, and 22, 2014. By Notice of Hearing dated

September 22, 2014, the OAL notified the parties that a hearing was to be held on February 17, 2015.

On February 17, 2015, Fernandes failed to appear for the scheduled hearing. Counsel for PSE&G appeared with his witness and was prepared to proceed. Counsel for Petitioner advised the court on the record that his office made several attempts to contact Petitioner regarding the hearing. Counsel stated that it was not until 10:00 a.m. on the day of the hearing that Petitioner contacted him by telephone and, in effect, "fired" counsel.

More than twenty-four hours have passed since the February 17, 2015, scheduled hearing and petitioner has not contacted the OAL to offer any explanation for his nonappearance. Absent exigent circumstances, a petitioner's failure to prosecute a matter should result in its dismissal. Henderson v. Jersey Central Power and Light Company, Dkt. No. PUC 2470-10, Initial Decision (January 5, 2011) <<http://lawlibrary.rutgers.edu/new-jersey-administrative-decisions-0>> (citations omitted).

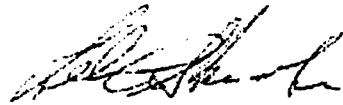
Here, neither exigent circumstances nor, for that matter, any explanation whatsoever has been offered to excuse petitioner's failure to appear. Respondent PSE&G requests dismissal of this case with prejudice.

DECISION AND ORDER

I **CONCLUDE** that petitioner has failed to prosecute his appeal and no longer requests relief in this matter. Based on the foregoing facts and conclusion, I **GRANT** respondent's motion to dismiss and **ORDER** that the matter should be and hereby is **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.



February 19, 2015
DATE

LELAND S. MCGEE, ALJ

Date Received at Agency:

February 19, 2015

Date Mailed to Parties:
lr
