



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

EKE NKECHINYERE, ¹)	ORDER ADOPTION
Petitioner,)	INITIAL DECISION
)	
v.)	
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY,)	BPU Docket No. EC17040358U
Respondent)	OAL Docket No. PUC 13320-17

Parties of Record:

Eke Nkechinyere, petitioner *pro se*
Sheree L. Kelly, Esq., on behalf of Respondent, Public Service Electric and Gas Company

BY THE BOARD:²

The within matter is a billing dispute between Eke Nkechinyere ("Petitioner") and Public Service Electric and Gas Company ("PSE&G" or "Respondent"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities ("Board") now **ADOPTS** the Initial Decision rendered on November 5, 2018, as follows.

PROCEDURAL HISTORY

On or about April 7, 2017, Petitioner filed a petition with the Board requesting a formal hearing and disputing charges for gas and electric services rendered at her Chadwick Avenue, Newark, New Jersey residence ("the property"). Specifically, Petitioner alleged service invoices from Respondent were based on estimates instead of data collected from her electric meter. She

¹ The petition, disputed billing statements attached to the petition, and the Initial Decision by the Honorable Julio J. Morejon, A.L.J., all refer to Petitioner as "Nkechinyere Eke." However, at the hearing before ALJ Morejon, Petitioner stated on the record that her name is "Eke Nkechinyere." (1T 4:12-13).
² Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

claims she has attempted to request meter testing from PSE&G on various occasions, making reference to an agreement from July 2016.³

Attached to the Petition were monthly billing statements from January 2017 and February 2017. Both indicate all charges for gas and electric service were based on actual readings; charts contained in the statements indicate actual readings have been used to calculate Petitioner's monthly bill since at least January 2016. Despite this information, the petition avers these billing statements are "self[-]explanatory" and prove Respondent has been using estimates instead of actual data, and inaccurately calculating her bill as a result.

Respondent filed an answer to the petition, dated May 2, 2017. Respondent explained that, on or about December 2014, it installed Encoder Receiver Transmitter ("ERT") technology at the subject property. The answer also says that although ERT "meter readers obtain readings from the street by pushing a button," the readings obtained are actual readings, not estimates. This technology has been used to calculate charges at the property ever since. The answer further states that Respondent has attempted to coordinate a meter test⁴ with Petitioner on several occasions, but that she has not returned their calls or messages.

Subsequently, on September 18, 2017, this matter was transmitted by the Board to the Office of Administrative Law ("OAL") for a 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 -23. This matter was assigned to Administrative Law Judge ("ALJ") Julio C. Morejon.

On April 16, 2018, the parties agreed to adjourn the evidentiary hearing until June 11, 2018, so that PSE&G could test Petitioner's gas and electric meters. On June 11, 2018, the parties returned before ALJ Morejon for a hearing. Petitioner represented herself *pro se* at this hearing, and Respondent was represented by Sheree L. Kelly, Esq. (1T 4:3-13).⁵ No exhibits were identified or moved into evidence during the hearing, nor were any witnesses called by either party. Instead, ALJ Morejon conducted *voir dire* questioning of both Petitioner and Respondent's counsel. Respondent's counsel reported that PSE&G had been able to test Petitioner's electric meter and determined its accuracy. (1T 6:12-18). The same was memorialized in a letter sent to Petitioner. PSE&G was not able to test Petitioner's gas meter, however, because Petitioner was not home on the date and time of the scheduled test and Respondent could not obtain access to the meter. (1T 6:6-8). The matter was again adjourned to allow for gas meter testing.

At this hearing, Petitioner also advanced an alternative theory about the accuracy of her electric and gas meters specifically, that she is often out of her home for long periods of time, to the extent she believed her bills to be incorrect. (1T 20:19-21:16).

³ Here, Petitioner refers to a prior settlement with PSE&G dated July 29, 2016, which settled a matter before the OAL docketed as PUC 17175-13. Specifically, Petitioner agreed to pay her utility bills forward from July 2016. She did so until March 2017 and the occurrence of the events underlying this matter. She now owes PSE&G \$907.04 for the period of March 2017 through July 2017.

⁴ "Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months." N.J.A.C. 14:3-4.5(a). For a fee of \$5.00, a customer may request a Board inspector be present at the test. N.J.A.C. 14:3-4.5(e), (f).

⁵ 1T refers to the June 11, 2018 hearing transcript.

A telephone conference was held on July 16, 2018, wherein PSE&G stated it had tested Petitioner's gas meter and was confident in the accuracy of the readings taken.⁶ Petitioner, was not satisfied and indicated she wished to proceed with her claim. ALJ Morejon then granted Respondent's request to file a motion for a summary decision.

PSE&G filed its motion for summary decision on August 21, 2018. Respondent's motion was supported by the certification of James Walsh, a Senior Customer Relations Consultant for PSE&G. Petitioner filed her opposition on September 6, 2018, and the record closed on October 1, 2018.

DISCUSSION AND FINDINGS

Upon his review of the testimony at the June 11, 2018 hearing and Certification of James Walsh, ALJ Morejon found the following facts: (1) Petitioner's desired remedy was to have PSE&G test her gas and electric meters, as she disputed all bills forward from April 2017 due to her belief her gas and electric meters were inaccurate; (2) on May 10, 2018, PSE&G conducted an electric meter test at Petitioner's property and the meter's percentage of accuracy was 99.8%; (3) on June 16, 2018, PSE&G conducted a gas meter test at Petitioner's property and the meter's percentage of accuracy was 100.1%; and (4) Petitioner has not paid for her gas and electric usage since March 2017. (ID at 3-4).

ALJ Morejon stated that in order to prevail in this matter, Petitioner had to establish, by a preponderance of the evidence, that the disputed bills are inaccurate (ID at 5). He noted that by bringing a motion for summary judgment, Respondent submits that "the papers and discovery which have been filed . . . show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5. (ID at 4).

The Initial Decision then describes the bases by which a customer may request testing of their gas and electric meters, N.J.A.C. 14-3:4-5(a) to (f), as well as the 2% regulatory threshold for gas and electric meter accuracy; in other words, the permissible range of accuracy is 98% to 102%. N.J.A.C. 14:3-4.6. ALJ Morejon explained that PSE&G's tests of Petitioner's meters were within the acceptable range, and noted Petitioner did not rebut these figures. ALJ Morejon concluded Petitioner had not raised a genuine issue of material fact in this matter, had not met the burden of proof that there was a billing error and, accordingly, determined the facts of the case entitled Respondent to summary judgment as a matter of law.

Regarding Petitioner's alternative theory of her case, ALJ Morejon again noted that it is her burden to prove Respondent excessively billed for gas and electric service. ALJ Morejon again explained Petitioner produced no evidence to this end and concluded Respondent was entitled to summary judgment as a matter of law.

On November 5, 2018, ALJ Morejon issued an Initial Decision granting Respondent's Motion for Summary Judgment, denying the relief sought by Petitioner, and dismissing the petition. No exceptions to ALJ Morejon's Initial Decision were filed.

⁶ Although ALJ Morejon requested a copy of this transcript, no transcript of the July 16, 2018 telephone conference was produced.

After review of the entire record, the Board **HEREBY ADOPTS** the Initial Decision of ALJ Morejon. The Board **FINDS** that ALJ Morejon's conclusion that Petitioner failed to prove by a preponderance of the evidence under either theory is correct. In customer billing disputes before the Board, petitioners bear the burden of proof by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate, if it establishes reasonable probability that the facts alleged are true. Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

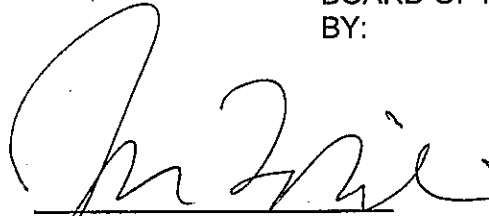
In this case, Petitioner failed to present any testimony or documentary evidence during the hearing. Consequently, ALJ Morejon's conclusion that Petitioner failed to prove by a preponderance of the evidence that her gas and electric meters were inaccurate is **HEREBY ADOPTED** by the Board.

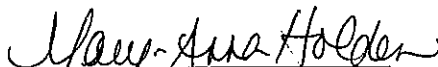
In conclusion, after careful review and consideration of the entire record, the Board **HEREBY ADOPTS** the Initial Decision and **ORDERS** that that the petition in this matter be **DISMISSED**.

This order shall be effective December 28, 2018.

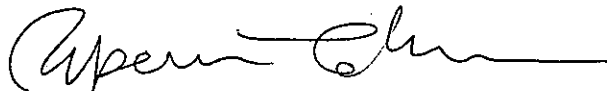
DATED: 12/18/18

BOARD OF PUBLIC UTILITIES
BY:

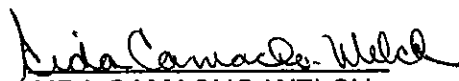

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


AIDA CAMACHO-WELCH
SECRETARY

NKECHINYERE EKE

V.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

**BPU DOCKET NO. EC17040358U
OAL DOCKET NO. PUC 13320-17**

SERVICE LIST

Eke Nkechinyere
197B Chadwick Ave.
Newark, New Jersey 07108

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

Eric Hartsfield, Director
Division of Customer Assistance
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350
Eric.hartsfield@bpu.nj.gov

Peter Van Brunt, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
Post Office Box 45029
Newark, New Jersey 07101-45029
peter.vanbrunt@law.njoag.gov



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 13320-17

AGENCY DKT. NO. EC 17040358

NKECHINYERE EKE,

Petitioners,

v.

**PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,**

Respondent.

Nkechinyere Eke, petitioner, pro se

Sheree L. Kelly, Assistant General Regulatory Counsel, for respondent Public Service Electric & Gas Company (PSE&G Services Corporation, attorneys)

Record Closed: October 1, 2018

Decided: November 5, 2018

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Nkechinyere Eke (Eke) disputes the electric and gas bills (utility bills) received from Public Service Electric and Gas Company (PSE&G) for her residence in

Newark for the period from July 2016 through April 2017.¹ Eke's challenges to the utility bills was filed with the Board of Public Utilities (BPU) on April 7, 2017. The BPU transferred the contested case to the Office of Administrative Law (OAL), which filed it on September 11, 2017, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

A prehearing conference was scheduled for January 8, 2018. However, the prehearing conference was never held due to scheduling conflicts with the parties. A hearing was scheduled for April 16, 2018, at which time Eke and counsel for PSE&G appeared. The parties consented to an adjournment of the hearing to allow PSE&G to test Eke's gas and electric meters. The matter was then adjourned to June 11, 2018.

On June 11, 2018, Eke and counsel for PSE&G appeared, and advised the undersigned that PSE&G was able to test the electric meter but not the gas meter. The parties consented to a second adjournment to allow PSE&G to test the gas meter. The matter was then rescheduled for telephone conference for July 16, 2018.

On July 16, 2018, a telephone conference was conducted; counsel for PSE&G and Eke appeared. Counsel for PSE&G informed the undersigned that PSE&G had conducted a test of both the electric and gas meters, and PSE&G was satisfied that the amount billed was correct. Eke informed the undersigned that she did not accept the readings of her electric and gas meters despite PSE&G's test of the meters and that she wanted to proceed with her claim. Counsel for PSE&G requested to file a motion for summary decision, as PSE&G opined that a summary decision motion was dispositive of the issues in this matter. Eke was advised that PSE&G would be allowed to file a motion for summary motion and the undersigned explained to Eke the procedural requirements for said motion.

Thereafter, PSE&G filed its motion for summary decision on August 21, 2018; Eke filed her opposition on September 6, 2018. The record remained open until September 17, 2018, to allow PSE&G to file a sur-reply to Eke's opposition, which sur-

¹ Eke continued to dispute her electric and gas bills throughout this proceeding and has not made a payment for months subsequent to April 2017.

reply was not filed. The record remained open as the undersigned awaited submission of copy of the transcript of the July 16, 2018, telephone conference. On October 1, 2018, the record was closed as no transcript was prepared and/or produced.

FACTUAL DISCUSSION AND FINDINGS

Eke's petition alleges that PSE&G failed to properly read her electric and gas meters from July 2016, in accordance with a prior billing dispute and settlement with PSE&G. Eke basis her claim on a prior settlement with PSE&G of July 29, 2016, which settlement concerned a matter before the OAL under docket number PUC 17175-13. Under the terms of the settlement agreement, Eke agreed to pay her utility bills from July 2016 forward, which she did until March 2017. Eke now owes PSE&G \$907.04, through July 12, 2018.

Eke claims her utility bills from PSE&G do not "come from my meter", which is to say that PSE&G estimated her utility bills, and she therefore, requestes that PSE&G "tests" her electric and gas meter to confirm the actual readings. On May 10, 2018, PSE&G conducted an electric meter test, which revealed that the electric meters "percentage of accuracy was 99.8%". PSE&G then permormed a gas meter test, which revealed that the gas meters "percentage of accuracy was 99.8%" (See, Certification of James Walsh,).

Eke disputes the meter readings because there were no "reliable witness or witnesses from at least one agency". Eke also disputes her meter readings as the same do not reflect the time that she is away from her "home for treatment and therapies."

I **FIND** as **FACT** that Eke's sole request in her petition is that PSE&G test her electric and gas meters to ensure that the same are in "good working order", and that Eke disputes the utility bills from April 2017, forward because of her claim.

I **FIND** as **FACT** that PSE&G conducted an electric meter test on May 10, 2018, evidencing that the electric meter's percentage of accuracy to be 99.8%, that PSE&G

conducted a gas meter test on June 16, 2018, evidencing that the gas meter's percentage of accuracy to be 100.1%.

I **FIND** as **FACT** that Eke has not paid PSE&G for her electric and gas useage since March 2017.

LEGAL ANALYSIS AND CONCLUSION

PSE&G seeks relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary judgment requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have held that the "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Anderson, 477 U.S. at 252. Conversely, it is critical that a favorable ruling on a summary judgment motion not "shut a deserving litigant from his [or her] trial." Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 77 (1954).

The burden of establishing that the charges tendered to the petitioners are not proper, such that they are owed a refund, rests with the petitioners. They must establish their contention that the billings are not proper by a preponderance of the credible evidence.

Meter tests can be requested by a customer. N.J.A.C. 14-3:4.5 provides:

- (a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.
- (b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9 Meter records.
- (c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.
- (d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.
- (e) Upon application by any customer to the Board, a Board inspector shall test the customer's meter. Such test shall be made as soon as practicable after receipt of the application for the test, and Board staff shall notify the customer and the utility as to the time and place of such test.
- (f) The Board shall charge a fee of \$5.00 for a meter test, payable at the time application is made for the test. This fee is to be retained by the Board if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, that is, more than two percent, or in the case of water meters,

more than one and one half percent, the utility shall reimburse the customer for the test fee paid.

N.J.A.C. 14:3-4.6 provides for an:

- (a) Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

Here, PSE&G did undertake a test of the electric and gas meters, and the meter was found to be operating within the accuracy levels set by the regulation. Thus, I **CONCLUDE** that there is no evidence that the electric and gas meters are unacceptably inaccurate under the regulation, and therefore there is no genuine issue of material fact in dispute.

One of Eke's arguments is that there was no "reliable witness or witnesses from at least one agency" to confirm the meter readings performed by PSE&G. However, I **CONCLUDE** that Eke presents no evidence to suggest that or even prove by a preponderance of the credible evidence that PSE&G's meter readings were incorrectly obtained.

In addition, Eke argues that PSE&G did not take into consideration the time that she was away from her home for treatment and therapy. Presumably this argument suggests that Eke's electric and gas usage should be less on the days she is away from her home. Given the fact that the burden is on the petitioner - I **CONCLUDE** that it has not been established by a preponderance of the evidence that PSE&G is billing for an excessive number of kilowatt-hours. I also **CONCLUDE** that it has not been shown that PSE&G is billing at a rate higher than that allowed through its BPU-approved rate structure, or that the bills are inaccurate.

ORDER

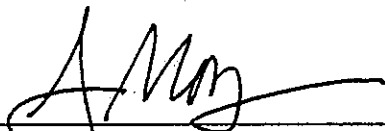
For the reasons cited above, I **CONCLUDE** and hereby **ORDER** that the appeal be **DISMISSED**.

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.

November 5, 2018
DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

November 5, 2018

Date Mailed to Parties:

lr