



Agenda Date: 8/7/19  
Agenda Item: 7A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

ROBERT FILIPCZAK,  
Petitioner

v.

SOUTH JERSEY GAS COMPANY,  
Respondent

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ORDER ADOPTING INITIAL  
DECISION

DOCKET NO. GC18101214U  
OAL DOCKET NO. PUC 18107-18

**Parties of Record:**

Robert Filipczak, petitioner, *pro se*  
Van L. McPherson, III, Esq., on behalf of Respondent, South Jersey Gas Company

**BY THE BOARD:**

The within matter is a billing dispute between Robert Filipczak ("Mr. Filipczak" or "Petitioner") and South Jersey Gas Company ("SJG" or "Respondent" or "Company"). 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 dated July 11, 2019, as follows.

**PROCEDURAL HISTORY**

On or about October 24, 2018, Mr. Filipczak filed a petition with the Board requesting a formal hearing to help resolve a billing dispute between him and SJG regarding natural gas service delivered to his residence at Shore Road, Linwood, New Jersey ("the property") under Account No. XXXXXXXXXXX, through a third-party supplier, Constellation Energy ("Constellation").

On or about November 21, 2018, SJG filed an answer to the petition. SJG advised that on or about November 2008, the Company was notified that Constellation would become the third-party gas supplier for Mr. Filipczak's property; Constellation continued to supply gas to the property until December 2017. According to SJG, in 2013, Mr. Filipczak requested to enroll in a monthly equal payment plan with SJG; however, due to increased rates charged by Constellation, the monthly payments made to SJG were not enough to cover gas usage and a

balance began to accrue, which resulted in Mr. Filipczak's outstanding balance to the Company. SJG contends that the charges billed to the property were correct and valid.

Subsequently, on December 12, 2018, this matter was transmitted 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") Dorothy Incarvito-Garrabrant. An evidentiary hearing was held before ALJ Incarvito-Garrabrant on April 24, 2019. At that hearing, Mr. Filipczak testified on his own behalf. (1T).<sup>1</sup> On that same date, Cheryl Cerato testified on behalf of the Respondent. *Ibid.* Exhibits P-1a through P-7 and R-1 through R-3 were marked for identification and moved into evidence. (1T16:1 to 1T17:9; 1T18:12-16; 1T21:10-12; 1T26:4-22; 1T31:3-13; 1T33:3; 1T35: 13-14; 1T39:1-9; 1T40:13-20; 1T57:1 to 1T59:18).

The record was closed on June 21, 2019. On July 11, 2019, ALJ Incarvito-Garrabrant issued an initial decision in favor of Respondent, denying the relief sought by Mr. Filipczak and dismissing the petition.

No exceptions to ALJ Incarvito-Garrabrant's Initial Decision were received by the Board.

### **EVIDENTIARY HEARING**

On April 24, 2019, the hearing on this billing dispute was heard before ALJ Incarvito-Garrabrant. (1T). Petitioner testified on his own behalf. (1T11:11 to 1T55:25). Petitioner testified that he lives alone at the property, and as such, his gas consumption has remained the same. (1T28:28 to 1T20:5). He testified that he was on a monthly equal payment plan of \$178 with SJG. *Ibid.* Despite his budget payment never changing, Petitioner testified that he received a SJG bill reflecting a large charge from Constellation in November 2017. *Ibid.* According to Petitioner, he did not recall signing up with Constellation and never received any communication from Constellation. *Ibid.* Petitioner testified that, after receiving the bill reflecting the charges from Constellation, he contacted Constellation to request a spreadsheet of the charges on his account and to cancel the agreement. (1T21:18 to 1T26:22). Petitioner further testified about his understanding of Constellation's spreadsheet, and advised that he was contesting charges in the amount of \$2,739.88. (1T27:1 to 1T43:11).

On cross-examination, Petitioner reiterated that he does not recall signing up with Constellation. (1T45:18-23; 1T48:7 to 1T8). Petitioner testified that he requested a spreadsheet from Constellation with a breakdown of usage and charges, but never requested a copy of his signed contract with them. (1T45:24 to 1T47:12). Petitioner also advised that he did not request anyone from Constellation to appear in court to authenticate the information contained in the spreadsheet as he did not want to pay for a witness. (1T49:9-20).

At that same hearing, Cheryl Cerato, a SJG complaint analyst, testified on behalf of Respondent. (1T60:23 to 1T117:15). Ms. Cerato testified that she has been working SJG for eight (8) years, and that her entire employment with the Company has been in the area of customer care. (1T62:16 to 1T63:-3). Ms. Cerato testified about Petitioner's account, dating back to 2008 when Petitioner entered into an agreement with the third-party supplier,

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<sup>1</sup> 1T refers to the transcript of the April 24, 2019 hearing.

Constellation. (1T64:10 to 1T78:3; R-1). She explained that when a customer agrees to use a third-party supplier, SJG becomes a point of contact between the third-party supplier and the customer – SJG passes the third-party supplier charges onto the customer through SJG bills. (1T66:23 to 1T67:6). Ms. Cerato explained that Constellation, as a third-party supplier, is not regulated by the Board and as such, their rates can be variable. Ibid. She also explained the process for how a customer would switch to a third-party supplier. (1T111:21 to 1T113:18).

Ms. Cerato further testified that SJG bills provide a cost comparison to the customer to show when the customer is either saving money or paying more with the third-party supplier than if the customer continued to use SJG. (1T67:17 to 1T74:12). She testified that Petitioner's bills showed that Constellation was the natural gas supplier to Petitioner's property. Ibid. Ms. Cerato further testified that there were months that Constellation was charging Petitioner more than SJG would have charged. Ibid. She acknowledged that Petitioner was on a budget payment plan with SJG; however, there were months that Petitioner's budget was not sufficient to cover the charges from Constellation. (1T78:4 to 1T79:25). Ms. Cerato testified that SJG periodically reviews a customer's account to assess whether an adjustment needs to be made to a customer's billing. Ibid. Additionally, once a customer terminates its agreement with a third-party supplier, the whole balance usually becomes due. (1T80:9-2). Thus, Ms. Cerato testified that there were months when Petitioner was current with his budget, but not current with his actual accrued balance, and that once Petitioner's contract with Constellation was cancelled, the balance on the account became due. Ibid. See also 1T89:3-16; 1T96:10 to 1T97:9; 1T101:18 to 1T102:5; 1T102:23 to 1T103:15.

On July 11, 2019, ALJ Incarvito-Garrabrant issued an initial decision, in favor of Respondent, denying relief sought by Petitioner and dismissing the petition. In the initial decision, ALJ Incarvito-Garrabrant made thirty-six (36) specific findings of fact based on her review of the testimony and documentary evidence. (ID at 9-12). Specifically, ALJ Incarvito-Garrabrant found that Petitioner is a customer of Respondent, which is a regulated public utility. (ID at 9). She found that in 2008, Petitioner contracted with Constellation, a third-party to supply his gas through Respondent's infrastructure; as a third-party supplier, Constellation is unregulated and as such, can establish its own rates and charges. (ID at 9-10). ALJ Incarvito-Garrabrant found that Respondent paid Constellation for the gas supplied to Petitioner, and that Respondent correctly passed those charges onto Petitioner's account. (ID at 10). She found that Petitioner was on a monthly budget plan with Respondent, which was insufficient to satisfy charges from Constellation. Ibid. As a result, ALJ Incarvito-Garrabrant found that Petitioner incurred an outstanding balance; Respondent correctly apportioned and applied Petitioner's payments to current and outstanding charges. (ID at 11).

ALJ Incarvito-Garrabrant found that Petitioner's contract with Constellation was terminated in December 2017, but despite that termination, Petitioner still owed the past due balance. (ID at 11-12). Accordingly, ALJ Incarvito-Garrabrant found that the outstanding balance of \$2,739.88 is appropriate, and that Petitioner owes same to Respondent. (ID at 12). ALJ Incarvito-Garrabrant also found Ms. Cerato's testimony to be credible and accurate. (ID at 13).

## **DISCUSSION AND FINDINGS**

In customer billing disputes before the Board, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is found to be preponderate if it establishes the reasonable probability of

the facts alleged and generates reliable belief that the tended hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

Here, Petitioner argued that he is not responsible for the charges assessed on his account related to Constellation as he did not agree to receive gas from Constellation and as he paid his bills consistent with his SJG monthly budget. First, as a threshold matter, and as cited by ALJ Incarvito-Garrabrant, Petitioner is the customer of record for SJG, and is responsible for payment for all gas service rendered at the property. (ID at 14). See N.J.A.C. 14:3-1.1; 14:3-7.1. Second, despite Petitioner's claims that he never agreed to switch to Constellation as a third-party supplier, the Board notes that there are regulations in place to protect customers from unauthorized changes in a customer's natural gas supplier. See N.J.A.C. 14:4-2.1 to -7. ALJ Incarvito-Garrabrant found that Petitioner provided insufficient evidence to prove that the switch was unauthorized or that the bills were inaccurate. (ID at 15-16). Indeed, as noted by ALJ Incarvito-Garrabrant, the evidence from SJG supports the contrary finding – namely, that Petitioner authorized the switch, benefitted from the contract, and did not contest the charges, until Constellation's rates increased dramatically, causing a past due balance. Ibid.

Additionally, the record is clear that Petitioner was on a budget payment plan consistent with N.J.A.C. 14:3-7.5, which permits a customer to pay a pre-determined monthly rate for a set period of time based on a customer's average usage. The utility is then required to "true up" the actual cost of service rendered and issue a final bill at the end of the budget year, which should include that month's budget payment plus an adjustment of any difference between the budget billed amount and actual cost of services. See N.J.A.C. 14:3-7.5(g). Here, Petitioner was on a monthly budget plan with SJG that, at times, was insufficient to pay the charges issued by Constellation. As a result, Petitioner's account accrued a balance that would eventually need to be trued up. Petitioner failed to provide evidence to show that the outstanding balance on his SJG bills was inaccurate or improperly adjusted pursuant to N.J.A.C. 14:3-7.5. Conversely, Respondent provided extensive testimony and documentary evidence to explain Petitioner's outstanding balance.

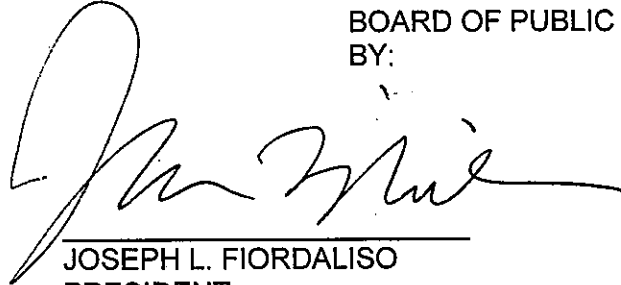
Thus, after careful review and consideration of the entire record and ALJ Incarvito-Garrabrant's credibility findings, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Incarvito-Garrabrant to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear his burden of proof that the outstanding charges owed to SJG are improper or inaccurate.

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

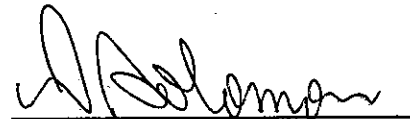
This order shall be effective August 17, 2019.

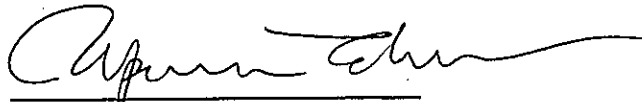
DATED: 8/7/19

BOARD OF PUBLIC UTILITIES  
BY:

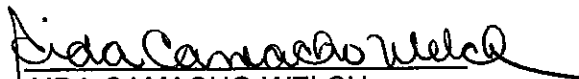
  
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JOSEPH L. FIORDALISO  
PRESIDENT

  
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MARY-ANNA HOLDEN  
COMMISSIONER

  
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DIANNE SOLOMON  
COMMISSIONER

  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

  
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ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
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AIDA CAMACHO-WELCH  
SECRETARY

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

**IN THE MATTER OF ROBERT FILIPCZAK, PETITIONER V. SOUTH JERSEY GAS  
COMPANY, RESPONDENT – BILLING DISPUTE**

**DOCKET NOS. BPU GC18101214U AND OAL PUC 18107-18**

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CASE MANAGEMENT

JUL 11 2019

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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

BOARD OF PUBLIC UTILITIES

JUL 11 2019

INITIAL DECISION

MAIL RECEIVED

OAL DKT. NO. PUC 18107-18

AGENCY DKT. NO. GC18101214U

**ROBERT FILIPCZAK,**

Petitioner,

v.

**SOUTH JERSEY GAS**

**COMPANY,**

Respondent.

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Robert Filipczak, petitioner, pro se

Van L. McPherson, III, Esq., Assistant General Counsel, for respondent

Record Closed: June 21, 2019

Decided: July 11, 2019

BEFORE DOROTHY INCARVITO-GARRABRANT, ALJ:

**STATEMENT OF THE CASE**

Petitioner, Robert Filipczak, disputes the amount of billings for natural gas service delivered to his home through a third-party supplier, Constellation Energy (Constellation), and respondent, South Jersey Gas (SJG).<sup>1</sup> Additionally, petitioner disputes that Constellation was authorized by him to be his third-party supplier.

cms  
K. Grady  
D. Thomas  
E. Hartstie  
J. Ford  
R. Lambert  
R. Matos  
K. Flynn  
S. Patnode  
C. Uechier

**PROCEDURAL HISTORY**

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<sup>1</sup> Petitioner has not filed any action against the third-party supplier, Constellation, in any court or tribunal of competent jurisdiction. At the hearing, respondent indicated that there is class-action lawsuit pending against Constellation filed by its customers. Respondent is not a party to that litigation.

The petitioner requested a hearing and the matter was filed at the Office of Administrative Law (OAL) on December 14, 2018, 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 April 24, 2019. At the beginning of the hearing, petitioner moved for this tribunal to accept and qualify him as an expert on spreadsheets. After reviewing petitioner's education, experience, and qualifications, petitioner's motion was denied. I did **NOT FIND** that petitioner was an expert in spreadsheets. I did **FIND** that spreadsheets, as utilized in this matter, were reasonably observable and understandable by a lay person without specialized training, experience, or education.

At the end of the hearing, the record was held open to allow the parties to obtain a transcript of the hearing and to submit written summations and briefs. On May 30, 2019, respondent filed its written summation and brief. Petitioner failed to file his written summation. The record remained open until June 21, 2019, to allow the pro se petitioner additional time to file his written summation and brief. No filing was received. The record closed on June 21, 2019.

## **FACTUAL DISCUSSION**

### **Testimony**

#### **For petitioner**

**Robert Filipczak** (Filipczak) testified on his own behalf. Petitioner is a chemist with thirty years of experience. During his career, he authored and published scholarly articles relating to heat flux and aircraft materials. (P-1a.) He also possesses patents for a type of fire extinguisher. (P-2a.) Petitioner resides in Linwood, New Jersey. Petitioner is a natural gas customer of respondent.

Petitioner testified that from, at least 2012 through the present, he had a monthly budget agreement with respondent. In 2012, the agreement provided for monthly payments of \$155 per month. This monthly amount increased over time to \$178 per



month. (P-1.) Petitioner does not know why this increased. Each year petitioner's gas consumption was nearly the same.

In March 2015, petitioner's billing changed significantly. However, petitioner continued paying his monthly budget plan amount. In November 2017, petitioner received a \$1,000 charge from Constellation, which petitioner alleged respondent chose to pass on to him. Petitioner believed this was incorrect. Petitioner maintained that he did not recall ever signing-up with Constellation and had no communication from Constellation. Petitioner never received anything from Constellation. The only place Constellation appeared was on respondent's bills as a marketer. Petitioner did not know what a marketer does. He insisted that he had no knowledge regarding Constellation until the \$1,000 charge appeared on his bill.

Petitioner stated that in 2016, his bill was zero dollars and his budget remained \$178 per month. However, in 2017, on the spreadsheet provided by respondent, showed that petitioner owed an outstanding balance to Constellation. (P-2.) It was at this point that petitioner questioned what Constellation was. Petitioner contacted Constellation, respondent, and the Board of Public Utilities (BPU).

Constellation provided petitioner with a spreadsheet of their charges.<sup>2</sup> (P-3.) Petitioner testified that there are glaring inconsistencies on Constellation's spreadsheet, especially when compared to respondent's spreadsheet. (R-1.) In this regard, on Constellation's document the January 2015 billing entry occurred between November and December of 2014. Petitioner maintained this demonstrated that the someone had tampered with the Constellation spreadsheet, although he conceded that he possessed no evidence showing that someone falsified the document.

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<sup>2</sup> Respondent objected to the introduction of Constellation's spreadsheet, P-3, because it was not supplied by petitioner during discovery and it was not authenticated properly. A brief recess was taken to allow respondent to review the document and the data contained therein. Respondent indicated that Constellation's data was different than respondent's billing information. (R-1.) Respondent renewed its objection to the document and reserved its right to raise the objection in its closing summation and brief. Ultimately, the document containing hearsay was admitted over respondent's objection pursuant to the Residuum Rule, and was given the weight deemed appropriate by this tribunal. (T58:2-25, 59:1-8.)

Petitioner argued that if you take the charges billed and divide it by the usage, you would get the rate. A review of the Constellation spreadsheet indicated that the rate materially changed each month and that during the period from January through March 2015, it increased drastically. Petitioner indicated that there is no way that the gas rate charged by Constellation could possibly have changed that much because gas is a regulated utility. This inappropriate rate was then billed by respondent, as shown on the respondent's spreadsheet. (P-4.) Additionally, there were billing discrepancies in the amount charged by Constellation and the amount billed by respondent. Petitioner submitted that respondent knew, or should have known, that there was a "huge difference between the marketer and utility charges ... ." (T31:23-25.) There were no charges on respondent's spreadsheet from December 30, 2014 to March 1, 2015, and then in April 2015, there was a huge difference again. It is only after April 2015 that it showed that petitioner owed Constellation a large sum. (P-4.)

Petitioner terminated his account with Constellation on December 9, 2017. This was confirmed in a correspondence from respondent to petitioner. (P-5.) Respondent advised that there would be no further charges from Constellation. However, petitioner's February 2018 bill showed Constellation charges. Petitioner indicated that there were Constellation charges on his March and April bills. Petitioner continued to pay his current monthly budgeted gas charges.

As a result, petitioner went to the Linwood Police Department. The officer advised that Constellation was a company and that he should contact the BPU. Petitioner's May 2018 bill showed Constellation charges. In response, petitioner went to the Federal Bureau of Investigation's (FBI) office in June. The FBI agent found it peculiar that these charges were on petitioner's bill. Petitioner advised the FBI that this is a wire-fraud case. The FBI referred petitioner to the BPU. The charges ceased to show on his bill after July, which the petitioner found suspicious.

Alternatively, petitioner also contended that the charges in March of 2015 were inaccurate and resulted from a gas leak which was not his fault. The leak occurred on respondent's portion of the gas line between the shut off valve and the street. Petitioner's gas had to be turned off. When respondent fixed the leak and reconnected

his gas service, the flames sputtered. Petitioner believed that respondent vented air through his gas line which caused his meter to turn and resulted in charges to him. Petitioner alleged that because the air is twice as dense as methane, it caused the meter to turn twice as fast and therefore, petitioner was charged twice as much. This gas leak coincided with Constellation suddenly having problems on its spread sheet.

Petitioner explained that P-7 showed that he succeeded in proving his point because respondent finally stopped billing him. Petitioner disputes the charges totaling \$2,739.88. Also, petitioner contests the March 2015 charges as illegitimate. That amount is included in the \$2,739.88. Petitioner also indicated he had credit card charges for the re-connection of his service resulting from a non-payment of the outstanding balance.<sup>3</sup>

On cross-examination, petitioner testified that he never requested a copy of the contract he signed with Constellation in 2009 from Constellation. Petitioner did not request a Constellation representative be at the hearing to testify, because it would cost too much and they probably would not appear. Petitioner acknowledged that he did not pay his bills in January 2015 or February 2015. However, he made up the missed payments by making three payments in March.

**For respondent**

**Cheryl Cerato** (Cerato), Board of Public Utilities Complaint Analyst, employed by respondent testified. She has been employed by respondent for eight years. Prior to her current position, she held the BPU Supervisor and Supervisor for customer service and dispatch positions. All of her positions have been in the customer care division.

Cerato testified that R-1 is a customer statement of petitioner's account. It begins in December 2008, when petitioner signed-up with the third-party supplier his marketer, Constellation, and continues through July 2018. In 2015, Constellation was making mass callings to potential customers asking for them to switch to Constellation.

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<sup>3</sup> No documentary evidence or testimony substantiating the claim for the amount of the credit card charges was produced by petitioner.

Also, after Hurricane Sandy, Constellation representatives went door-to-door signing up customers. Customers could also sign up on the internet through a website.

After obtaining authorization from the customer to switch from respondent, Constellation electronically sends the customer's name, account information, and other information, advising respondent of the switch to Constellation to update respondent's billing system. Respondent lets the customer know this switch occurred and provides the customer with thirty days to contact customer service, in the event they did not authorize the switch. Respondent does not enter any information on their end to effectuate the switch. All information comes from the third-party marketer, similar to a bank sending an electronic payment. The billing is automatically entered on Constellation's end, not respondent's. This is to avoid disputes between the customer and respondent in situations like this.

Constellation electronically sends their charges to respondent each month. As a result, respondent bills the petitioner the month after Constellation sends respondent the charge. Cerato noted that Constellation's charges are different from respondent's during certain months, because respondent uses actual meter readings, and Constellation does not. Constellation is not regulated by the BPU. Cerato explained that when Constellation bills respondent, the respondent must pay the bill. It then passes on the charges and bills the customer in the next month. Respondent is the "in-between" entity, linking Constellation and petitioner.

Cerato testified that R-2 was a packet of bills petitioner received from 2014 through 2018. Each month the bills clearly stated that petitioner was signed-up with Constellation. Each bill provides a cost comparison for the customer, showing what respondent charges would have been during that month and what their third-party marketer charged them. On the last page of each bill, it details whether the third-party marketer's costs exceeded respondent's and the amount of the excess, or the reverse, whether the third-party marketer's costs were less than respondent's and the amount of the savings. For the months in question, Constellation was charging petitioner more than respondent would have charged him.

Cerato acknowledged that petitioner was on a monthly budget plan with respondent. Constellation has a variable rate, because they are not a regulated gas company. They can charge whatever they want. For example, Constellation could charge a rate of \$ .90 one month and then it could increase the rate the next month to \$2.25. In this case, petitioner saw a difference in his billed amount over time because it was based on the billing respondent received for Constellation's charges. It was not based on his usage. It was based on what Constellation was charging him.

Cerato testified that many third-party marketer's will sign-up customers in the summer, when there is a lower rate. She has then seen the rates quadruple, as soon as winter begins. Cerato detailed that in the beginning petitioner was saving money with Constellation because they were charging less than respondent. However, this changed over time. For example, in March 2015, Constellation charged petitioner \$225 more than respondent would have charged him. (R-2.) In fact, Constellation had quadrupled his rate. This occurred again in April 2015.

Cerato indicated that if a customer contacts Constellation to cancel their service it takes three billing cycles, after Constellation contacts respondent. This is what occurred with petitioner. Respondent cancelled petitioner from Constellation in December 2017. By March 2018, Constellation was no longer billing petitioner.

Relative to the past due balance, which is alleged by petitioner to be new Constellation charges after his cancellation in December 2017, this belief is inaccurate. The ongoing Constellation charges were for past due charges, not current charges. Respondent paid Constellation in full as required. However, petitioner did not pay respondent for these charges, so they continue to be billed each month. The past due charges were incurred before December 2017. The past due charges decreased slightly each month after December 2017, as petitioner made his monthly payment to respondent, because respondent apportioned that payment to the past due charges and new charges.

If a customer is on a monthly budget billing plan, then he pays the same amount each month for twelve months. In the following year, an adjustment to the monthly

payment is made depending on whether the monthly amount was sufficient to cover the charges. The adjusted amount will be the monthly budget bill for the following year. If a customer is not on budget billing, then the full balance is due each month. Constellation charged the petitioner more than his monthly budget bill. As a result, petitioner saw his monthly budget increase in the following year. It is possible that petitioner was technically current with his budget plan, but was not current with his balance. This happened when the petitioner paid his monthly bill but that payment was insufficient to satisfy the actual monthly charge. On the bill, the budget is reflected in one area and the balance is reflected in another area.

If a customer leaves a third-party marketer, and what they paid for the twelve-month prior period with the marketer is higher than what respondent would have charged, then upon returning as a customer to respondent, that twelve-month period becomes the basis for the monthly budget determination. Additionally, when they leave the third-party marketer, normally the entire balance owed is due. However, if the customer contacts respondent then, as a courtesy, respondent will manually calculate the amount and roll the balance due amount into the budget so that they do not have to pay it all at once. Petitioner never contacted respondent to do that.

Cerato acknowledged that at least as far back as 2013, petitioner was on a budget plan. She testified that petitioner's interpretation of the bills was incorrect. In December 2016, the bill reflected \$0 was due. However, that was the budget plan billing amount only and only showed \$0 due because petitioner made two payments the month before. There was still an outstanding balance. Petitioner's budget plan was not paying the entire balance. Petitioner is confusing his payments reflected on the spreadsheet with amounts due. To compound the confusion, Constellation did not bill chronologically in 2014-2015. It billed November 2014, then February 2015, then back to December 2014. Respondent is the pass through and required to pass the charges on to the petitioner when received by it.

Cerato explained that petitioner received a letter from Constellation saying that his account with them was paid because respondent had paid the bill to Constellation. Petitioner now owed those outstanding balance costs to respondent. The charges listed

on the bill after December 2017 were past due charges, not new charges. Eventually, to help end the petitioner's confusion, in August 2018, respondent applied all of the money which it was receiving to it to the outstanding Constellation balance. That way petitioner would not see the word "Constellation", on his bill and be confused any longer. However, it shifted the outstanding amount due from Constellation to respondent.

Finally, Cerato testified that the gas lines in March 2015 were not purged at his meter. They would have been purged in the street. No charges occurred because air went through the line as petitioner alleged. Respondent had no record of any gas leak at or near petitioner's property back to 2009.

#### **FINDINGS OF FACT**

Based upon the testimonial and documentary evidence, and having had the opportunity to observe the appearance and testimony of the witnesses, I **FIND as FACTS** the following:

1. Petitioner is the end user and customer of respondent, which is a regulated local distribution company for gas.
2. In 2008, petitioner contracted with Constellation, an unregulated third-party marketer to supply his gas, through respondent's infrastructure.
3. Constellation is petitioner's third-party marketer, which supplied gas to petitioner's home.
4. Respondent had no ability to simply switch petitioner from it to Constellation. Petitioner would have had to have authorized Constellation to switch him from respondent.
5. The authorization to switch was delivered electronically by Constellation to respondent. Respondent had no ability to unilaterally switch petitioner to Constellation.

6. Respondent provided petitioner with notice of his selection of Constellation and his switch at the time it occurred, and provided petitioner with time to contest the switch in accordance with regulations and its procedures.
7. Petitioner did not object to the switch to Constellation.
8. Petitioner did not provide notice that he was slammed.
9. During some years, petitioner saved money by utilizing Constellation, because they charged less than respondent was charging its customers.
10. Petitioner knew that Constellation and third-party marketer information was listed on each of his bills since 2008. As a result, petitioner was on notice Constellation was his third party supplier for gas.
11. As required, respondent paid Constellation for petitioner's monthly charges each month, when it received the billed amount from Constellation.
12. Respondent was required to pass on the Constellation charges incurred by petitioner to him. Respondent billed those charges to petitioner in the following month.
13. Constellation is unregulated and is permitted to establish its rates and charges.
14. Constellation's charges to petitioner increased significantly during the winter months of 2014 and 2015, such that petitioner was no longer saving money.
15. Respondent's spreadsheet of payments and charges is accurate. (R-1.)
16. Respondent's spreadsheet detailed Constellation's fluctuating charges, which were transmitted from Constellation to respondent electronically. (R-1.)
17. After November 2013, Petitioner was on a monthly budget plan for payments of \$178 per month. (R-1.)
18. As Constellation's charges increased this payment amount was insufficient to entirely satisfy his monthly charges to Constellation. As a result, petitioner incurred an outstanding amount balance. (R-1, P-3.)
19. Petitioner has maintained an outstanding balance due, since December 2014. (R-1.)
20. No competent evidence was produced to show that a gas leak occurred at petitioner's residence in or about March 2015.



21. No competent evidence was produced to show that air was vented through petitioner's meter in March 2015, resulting in an improper billing for gas usage.
22. Constellation did not always bill chronologically. Constellation billed petitioner's December 2014 charges after it billed charges for February 2015. Then, Constellation did not bill petitioner until March 2015 for charges incurred for January and February. This was not a result of any action taken by respondent.
23. Petitioner failed to make his \$178 monthly budget payment in January 2015, February 2015, and March 2015. In April 2015, petitioner made a payment of \$534, which equaled three monthly payments of \$178. However, petitioner failed to make his monthly payment for April. As a result, petitioner's outstanding balance increased.
24. Respondent apportioned and applied petitioner's payments to petitioner's current and outstanding charges properly.
25. There is no credible evidence that respondent's or Constellation's billing had been tampered with or falsified.
26. Petitioner canceled his service with Constellation on December 9, 2017. (P-5.)
27. As required, respondent paid Constellation the last amount charged by Constellation to petitioner and passed through the charge to petitioner.
28. Petitioner was charged properly by respondent for his gas service, including but not limited to the passed through Constellation charges.
29. Respondent apportioned petitioner's monthly payment to current charges and past due Constellation charges. This resulted in the outstanding balance being identified as Constellation's charges on petitioner's post January 2018 bills.
30. As respondent apportioned petitioner's monthly payments to his current and past due Constellation charges, the outstanding balance was reduced.
31. Respondent stopped identifying the outstanding past due amount as charges specific to Constellation by removing Constellation's name from the bill. This was an attempt by respondent resolve petitioner's feelings and misplaced beliefs that he was continuing to be charged by Constellation and respondent,

after he had terminated his service with Constellation. The outstanding amount remained due and owing.

32. Petitioner has not instituted any legal action against Constellation and is not a member of the class-action suit which has been filed against Constellation.
33. Petitioner did not attempt to obtain a copy of his contract for service with Constellation or authorization to switch from respondent from Constellation. Petitioner did not produce any witness from Constellation.
34. The contested charges were \$2,739.88. Petitioner's payments have been apportioned each month against those charges.
35. Respondent's bills totaling the \$2,739.88 were appropriate and proper.
36. The \$2,739.88 and any other outstanding balance amounts reflected on petitioner's bills are owed by petitioner to respondent.

### Credibility

Credibility is the value that a finder of the facts gives to a witness's testimony. It requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself," in that "[i]t must be such as the common experience and observation of mankind can approve as probable in the circumstances." In re Perrone, 5 N.J. 514, 522 (1950). A fact finder "is free to weigh the evidence and to reject the testimony of a witness . . . when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." Id. at 521-22; see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). A trier of fact may reject testimony as "inherently incredible" and may also reject testimony when "it is inconsistent with other testimony or with common experience" or "overborne" by the testimony of other witnesses. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Similarly, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility

and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The choice of rejecting the testimony of a witness, in whole or in part, rests with the trier and finder of the facts and must simply be a reasonable one. Renan Realty Corp. v. Cmty. Affairs Dep’t, 182 N.J. Super. 415, 421 (App. Div. 1981).

After reviewing the evidence, I make the following additional **FINDINGS of FACT**:

The testimony presented by Cerato about petitioner’s account and billings, and her experience and knowledge of the respondent’s procedures and the regulations respondent is required to follow made sense. Cerato had no pre-existing issues with or animosity towards petitioner, which made her testimony believable. Cerato expressed that she genuinely attempted to help petitioner understand his bill and the charges he received from Constellation and took efforts, which were not required, including removing the word Constellation from the bill, to help alleviate petitioner’s confusion. Taken as a whole, Cerato’s testimony, demeanor, and efforts made her testimony believable. I **FIND** that Cerato’s explanation of the bill and the billing events which occurred to be credible and accurate.

### **LEGAL DISCUSSION**

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959). The burden of establishing that the charges tendered to the petitioner are not proper, such that he is owed a refund, rests with the petitioner. Petitioner must establish his contention that the billings are not proper by a preponderance of the credible evidence.

The jurisdiction of the OAL to hear and decide contested cases such as this is derived from the BPU, which is responsible for deciding billing disputes. See, Wood v. Dept. of Community Affairs, 243 N.J. Super. 187, 196 (App. Div. 1990), citing N.J.S.A. 52:14B-1 to -15. (See also, Harjani v. Atlantic City Elec. Co., OAL Docket No. PUC 9396-13, 2013 N.J. AGEN LEXIS 498. Final Decision (February 19, 2014).) In deciding such cases, the parties are bound by the Rules and Regulations adopted by the Board of Public Utilities since they have the force and effect of law.

The regulations applicable to this case are the following:

N.J.A.C. 14:3-1.1 "Definitions" provides:

"Customer of record" means the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein.

N.J.A.C. 14:3-7.1 "Billing general provisions" provides:

(a) The customer(s) of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

Based upon the above provisions, it is clear that petitioner, as the customer of record, is responsible for payment for all gas service rendered to his residence. This makes petitioner responsible for all proper and appropriate charges billed to him by respondent, including those charges for gas supplied which passed-through respondent from Constellation.

N.J.A.C. 14:4-2.1 provides in pertinent part as follows:

(a) This subchapter is intended to protect against unauthorized changes or "switches" in a customer's electric power supplier or natural gas supplier as required by the Electric Discount and Energy Competition Act, P.L. 1999, c. 23, section 37, N.J.S.A. 48:3-86, et seq.

(b) This subchapter applies to local distribution companies (LDCs) and third party suppliers (TPSs), as these terms are defined at N.J.A.C. 14:4-1.2.

(c) This subchapter applies to the switching of a customer in either of the following situations:

1. A switch from one TPS to another TPS;
- or
2. A switch from an LDC to a TPS.

...

An LDC is a gas public utility which distributes gas to end users in New Jersey. N.J.A.C. 14:4-1.2. A TPS is a gas supplier. This marketer is a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to customers. N.J.A.C. 14:4-1.2; N.J.A.C. 14:4-5. Respondent was petitioner's LDC. Constellation was petitioner's TPS, which supplied the gas. Petitioner was the end user and customer.

N.J.A.C 14:4-2.7 entitled Slamming complaints and investigation provides as follows:

- (a) A customer that believes it has been the victim of slamming may contact the TPS to resolve the problem and/or may contact the Board and file a written complaint.
- (b) If a customer contacts the Board with an allegation that the customer has been slammed, the portion of customer's bill that relates to the TPS's services shall be considered in dispute starting upon the date of the switch that is subject of the slamming complaint. The TPS shall be subject to the same procedures and requirements that apply to a utility involved in a billing dispute, as set forth at N.J.A.C. 14:3-7.6.
- (c) The Board may investigate an allegation of slamming or any other violation of this subchapter upon its own initiative or upon a complaint.
- (d) (Reserved)
- (e) If the Board finds that a customer has been slammed, the customer shall not be liable to its authorized TPS or its LDC for any charges in excess of those the customer would have been liable for had the slamming not occurred.
- (f) If a customer disputes a switch, either before or after the LDC effectuates the switch, the TPS shall produce all documentation required under N.J.A.C. 14:4-2.3(c) and/or (g) and/or 2.4, within 10 business days after a request by the customer or the Board.

Here, petitioner contracted with Constellation in 2008. Although he argues that he never authorized a switch of his gas supplier to Constellation, he did not object when advised of the switch by respondent in 2008, pursuant to N.J.A.C. 14:4-2.6. Petitioner never contacted the BPU and informed them he was slammed, during the nine years Constellation supplied his gas. N.J.A.C. 14:4-2.7. Petitioner reaped the benefits of Constellation's lower charges for several years. Only when Constellation's charges drastically increased and their billing became erratic, did petitioner question the charges. However, even then, petitioner did not request that Constellation provide a copy of his contract or any documents showing his authorization to switch his service from respondent.

Further, respondent was unable to switch petitioner to Constellation. The notice of switch and authorization information was delivered to it from Constellation electronically; thus, updating petitioner's account on Constellation's side. This was the procedure for all switches to TPSs and subsequent charges imposed by them. This procedure is in place to protect LDCs from disputes with customers by removing LDCs from control over the actions or charges of the TPS.

There was no advantage to respondent switching petitioner to Constellation in 2008, because at the time it occurred Constellation's charges were less than respondent's and petitioner became Constellation's customer. The evidence presented was insufficient to demonstrate, as petitioner argued, that petitioner never contracted with Constellation. To the contrary, the evidence demonstrated that petitioner authorized the switch, benefitted from the contract, and did not contest the charges, until Constellation's charges increased dramatically, resulting in a past due balance. Unfortunately, contrary to petitioner's belief, Constellation's charges were not regulated. This permitted Constellation to increase its charges without regulatory procedures and restrictions. This is the risk of engaging a TPS.

Relative to respondent's bills, it appears the petitioner misread them. The charges he disputes were proper and appropriate. They arose from a situation in which petitioner, for most of the months in question, usually paid his monthly budget payment

plan amount. However, that amount was insufficient to satisfy his entire monthly charges, part of which were from respondent for their means of supply and part of which was for the gas commodity supplied by Constellation. As a result, in 2014, petitioner incurred an outstanding amount, which has continued.

Each monthly bill received by petitioner detailed the comparison of savings or increased cost between Constellation's charges and what would have been charged by respondent. Petitioner was on notice for nine years that his gas was supplied by Constellation. It was incumbent upon petitioner to determine whether he wished to continue with Constellation. If not, then it was his responsibility to act and switch back to respondent. Petitioner did this in December of 2017.

After that date, petitioner's bills reflected that the outstanding balance owed arose from Constellation's charges prior to December 2017. This past due amount was carried forward on each bill. The amount decreased slightly between January 2018 and July 2018, as respondent apportioned petitioner's monthly payment, which was his budget amount, to his current and past due charges. Petitioner misinterpreted the bill to read that the post December 2017 Constellation billings were for new charges. It was simply the outstanding balance, which he continued to carry. In July, respondent in an attempt to resolve petitioner's misinterpretation, removed the word Constellation from the bill and then just showed the outstanding amount as past due. I **CONCLUDE** that respondent appropriately and properly billed its charges and Constellation's charges to petitioner.

Respondent had no control over the Constellation's charges. It only acted as the mechanism to bill those charges to petitioner. Respondent paid Constellation for their charges, when it was billed. Petitioner owes the past due amount to respondent. The total amount of outstanding charges is undisputed by the parties. I **CONCLUDE** that petitioner is responsible to pay respondent the past due amount of \$2,739.88, subject to any credits for payments made by petitioner, which have been apportioned and applied to the outstanding balance.

Finally, petitioner's suspicions arising from the discrepancies between the respondent's spreadsheet and Constellation's spreadsheet were not supported. The spreadsheets detail different data. Respondent's shows the petitioner's charges from Constellation and respondent, petitioner's payments, and the outstanding balance, along with gas supply data. These amounts are also detailed on respondent's monthly bills. Respondent's spreadsheet provides the whole picture of respondent's account. Constellation's spreadsheet only shows Constellation's charges based on what it determined was petitioner's usage and the date on which Constellation chose to forward the charge to respondent. I **CONCLUDE** that petitioner presented no evidence to demonstrate that his bills were tampered with or falsified.

Based on the foregoing, I **CONCLUDE** that petitioner has failed to satisfy his burden by a preponderance of the evidence.

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

#### **ORDER**

For the reasons cited above, I **ORDER** that the relief sought by petitioner is **DENIED** and the action filed by petitioner is **DISMISSED**.

It is further **ORDERED** that petitioner shall pay to respondent the past due amount of \$2,739.88, subject to any credits for payments made by petitioner, which have been apportioned and applied to the outstanding balance by respondent.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

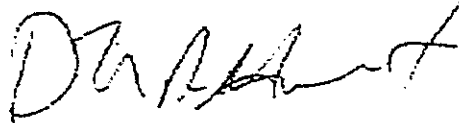
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is 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.

July 11, 2019  
DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

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**WITNESSES**

**For Petitioner:**

Robert Filipczak, petitioner

**For Respondent:**

Cheryl Cerato, Board of Public Utilities Complaint Analyst

**EXHIBITS**

**For Petitioner:**

- P-1a Scholarly Article
- P-2a Patent Information
- P-1 SJG Invoices 2012, 2013, 2014, and 2016
- P-2 SJG Invoices 2017 and 2018
- P-3 Constellation Spreadsheet and correspondence
- P-4 SJG Statement of Account Spreadsheet
- P-5 SJG Invoices 2018, March through September and duplicate Constellation Spreadsheet
- P-6 SJG Invoices December 2014, January 2015, May 2017, May 2015, June 2015
- P-7 SJG correspondence, dated April 26, 2018 and Discontinuance Notices, dated July 24, 2018, August 28, 2018, and October 2, 2018

**For Respondent:**

- R-1 SJG Spreadsheet
- R-2 SJG Invoices, dated November 2014-November 2018
- R-3 SJG Correspondence, dated November 20, 2018