



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

KIM J. NOTTE T/A COLTS NECK INN HOTEL
AND RESIDENCE,
Petitioner,

v.

NEW JERSEY NATURAL GAS,
Respondent

ORDER OF EXTENSION

OAL DOCKET NO. PUC 03616-18
BPU DOCKET NO. GC17030190U

(SERVICE LIST ATTACHED)

The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on August 27, 2019; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on October 11, 2019. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until November 25, 2019.

DATED: 9/27/19

BOARD OF PUBLIC UTILITIES
BY:¹

JOSEPH L. FIORDALISO
PRESIDENT

ATTEST:

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.

¹ Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 9-30-19

cc: Service List Attached

DATED: 10/1/19

Lisa James-Beavers

LISA JAMES-BEAVERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board:

10/1/19

Date Board mailed executed Order to Parties:

10-2-19

KIM J. NOTTE T/A COLTS NECK INN HOTEL AND RESIDENCE

v.

NEW JERSEY NATURAL GAS,

**BPU DOCKET NO. GC17030190U
OAL DOCKET NO. PUC 03616-18**

SERVICE LIST

Kim J. Notte
c/o Colts Neck Inn Hotel & Residence
191 Country Road 537
Colts Neck, New Jersey 07722

Eileen Quinn, Esq.
Associate General Counsel
New Jersey Natural Gas
1415 Wyckoff Road
Post Office Box 1464
Wall, New Jersey 07719

Julie Ford-Williams, Director
Division of Customer Assistance
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Julie.Ford@bpu.nj.gov

Karriemah Graham, Chief
Office of Case Management
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
Karriemah.graham@bpu.nj.gov

Matko Ilic, DAG
Department of Law and Public Safety
Division of Law
25 Market Street
Post Office Box 112
Trenton, NJ 08625
Matko.Ilic@law.njoag.gov



BOARD OF PUBLIC UTILITIES

AUG 27 2019

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CASE MANAGEMENT

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BOARD OF PUBLIC UTILITIES
TRENTON, NJ

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

MAIL RECEIVED

INITIAL DECISION

OAL DKT. NO. PUC 03616-18

AGENCY DKT. NO. GC17030190U

KIM J. NOTTE T/A COLTS NECK INN
HOTEL AND RESIDENCE,

Petitioner,

v.

NEW JERSEY NATURAL GAS,

Respondent.

Bert T. Lundberg, Esq. for petitioner

Eileen Quinn, Assistant General Counsel, for respondent (New Jersey Natural Gas)

Record Closed: July 17, 2019

Decided: August 27, 2019

BEFORE JUDITH LIEBERMAN, ALJ:

STATEMENT OF THE CASE

Petitioner, Kim J. Notte, filed a billing dispute with the Board of Public Utilities (BPU) appealing the denial by respondent, New Jersey Natural Gas (NJNG), of her application for gas service at a business location. Respondent denied the application because it determined petitioner did not operate a bona fide new business entity at that

CMS
K. Graham
D. Thoma
E. Hartsfield
J. Ford
R. Lambert
R. Matos
K. Flynn
C. Vachier

location. Respondent determined a past due balance owed by the business associated with that location must first be paid before service could be provided.

PROCEDURAL HISTORY

Petitioner filed a petition with the Board of Public Utilities (BPU) on or about February 28, 2017. NJNG received the petition on March 16, 2017, and filed an answer on May 5, 2017. On March 9, 2018, the BPU transmitted this matter to the Office of Administrative Law for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13. The matter was heard on February 13, 2019, and the record was kept open to permit the parties to file post-hearing briefs. After an extension of the filing deadline was granted, the briefs were filed on May 31, 2019 and June 3, 2019. Respondent provided exhibits supporting its brief on July 17, 2019, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed. I, therefore, **FIND** the following as **FACT**:

1. Petitioner was married to Peter Mavrookas during the times at issue. Petitioner filed for divorce on September 18, 2018.
2. Mavrookas owned and operated the Colts Neck Inn via companies called GABGEO, Inc. and LKY II, Inc. J¹-93, 101.
3. In or about January 2015, respondent determined that the Colts Neck Inn had been undercharged for service and issued a bill for the amount that was due. On March 25, 2015, Mavrookas entered into a deferred payment agreement with the respondent for the past due gas bills. He agreed to pay \$1,057.10 per month for twenty-three months. J-7.

¹ "J" refers to jointly stipulated documents; they are marked with the prefix "NJNG."

4. Mavrookas paid approximately half of the payments due pursuant to the deferred payment agreement.
5. In or about June 2016, respondent issued a gas service disconnection notice to the company then operating the Colts Neck Inn.
6. On June 24, 2016, petitioner applied for gas service at the location of the Colts Neck Inn. She represented in her application that she had established a new business that would operate at the Inn.
7. On July 22, 2016, the respondent advised the petitioner that her application to be considered a new business at the location at issue had been rejected pursuant to Tariff section 2.13. The petitioner was advised that the debt owed to the respondent by the Colts Neck Inn must first be satisfied before an account could be established in her company's name. Unless the debt was satisfied, respondent would proceed with termination of gas service at the location pursuant to the July 15, 2016, notice of disconnection. J-48.

Testimony

For the respondent:

Suzanne Bostwick, was the respondent's customer service manager and had been employed by the respondent for twenty-nine years. She explained that, ordinarily, a new customer who sought to establish an account would provide respondent with the address of the location where service was to be provided, a business name and tax identification number if appropriate, mailing address, and security deposit. Additional documentation was required if the then-current account at that proposed service location was delinquent or if service there had been disconnected due to non-payment. The respondent had past experience with delinquent customers who claimed to be a new business at the location to avoid payment a past due bill. As an example,

spouses, business partners, and other family members have "substitute[d] themselves as a customer of record." (T17:19-20).²

On June 24, 2016, the petitioner phoned the respondent to make payment on an account associated with a company called LKY II. She spoke with a customer service representative and provided the account number and tax identification number for LKY II. Upon learning that a monthly payment of \$3,000 was past due, petitioner told the representative that she was operating a new business entity at the same location. She did not reference the new business entity until after she learned about the past due bill.

The customer service representative asked the petitioner to provide documentation concerning her new business entity. Over several days, the petitioner provided documentation concerning the formation of a business called Peace Love Grace, its tax identification number, and a lease from ZJJ Holdings, which was the new owner of the property. The petitioner also provided her driver's license, which alerted the customer service representative to her married name, Mavrookas. The petitioner previously used only her maiden name, Notte. The customer service representative who reviewed the materials noted that Mavrookas was the owner of the Colts Neck Inn and he and LKY II were associated with a delinquent account at that location. The representative reviewed the phone number provided by the petitioner and found that Mavrookas was an authorized "speaker for that account." (T20:11).

The matter was brought to Bostwick's attention by a senior clerk. The clerk told Bostwick that the petitioner had been evasive about Peter Mavrookas and said he was not her husband. Bostwick listened to the phone calls between the petitioner and the representatives in the call center. She also reviewed the account history at the location. She found that it was "well documented" that Peter Mavrookas was the owner of the Colts Neck Inn for many years and "other members of the Mavrookas family name [were] listed in remarks[.]" (T21:9-13). There was a concern that the petitioner "may not be a genuine bona fide new applicant for service at this location." (T21:14-15).

² "T" refers to the transcript of the February 13, 2019 proceedings. Citations are to the transcript page number, followed by the page lines. (T page:line(s)).

Bostwick observed that, on at least two prior occasions, individuals had called the respondent to advise they were the new owners of the business. They were directed to provide documentation of their ownership but did not do so. She noted that some of those calls occurred when a substantial amount was owed or a disconnection notice had been issued. She further noted that one of these calls occurred the month prior to the petitioner's call. This heightened the respondent's concern about the petitioner's relationship with the then-current account holder.

Bostwick asked Patrick Hughes, respondent's security investigator, to research the property and the account. He gathered documents concerning the account and reviewed the customer tracking system.³ In November 2014, a person named Pankaj requested new service at the location. A significant amount was owed on the account at that time. Pankaj did not produce a notarized lease and tax identification number, as requested, or any other information to support his application for a new business account.

In January 2015, a revenue billing supervisor contacted the Colts Neck Inn concerning a bill that had been outstanding for months. The supervisor spoke with the manager, Grace, and left a message for the owner, Peter, asking him to call back. Hughes noted that Grace Caputo is listed in the respondent's records as the Inn's manager.

Billing records revealed that a disconnection notice was sent to the Inn on March 7, 2015. The past due amount was \$27,361.54. The respondent had withheld collection activity until it issued the disconnection notice. Peter Mavrookas requested a longer deferred payment arrangement than originally discussed.⁴ The respondent agreed to a longer payment period. Mavrookas paid approximately half of the scheduled payments.

³ The customer tracking system contains the notes recorded by customer service representatives when they speak with a customer.

⁴ The respondent previously communicated with Mavrookas concerning a deferred payment arrangement.

On May 6, 2016, Grace Caputo advised the respondent there was a new business owner, The County Comfort Inn, LLC. J-8. Caputo was told that the new owner was required to provide documents concerning the business. No documents were provided. The customer of record was thus not changed to The Country Comfort Inn. Upon review, Hughes found that The County Comfort Inn's original filing date was April 2016 and Dino Mavrookas was its agent. J-9-12. Dino Mavrookas was also associated with the Colts Neck Inn. On June 7, 2016, he signed a check from the Colts Neck Inn payable to NJNG. J-14-15.

Another disconnection notice was issued on June 15, 2016.⁵ The petitioner placed her first call to the respondent on June 24, 2016, during which she initially expressed an intent to make a payment but subsequently said a new company was located at the site.

Bostwick spoke with the petitioner on July 28, 2016. The petitioner initially said she was divorced from Peter Mavrookas. She later said she was separated and there was not a divorce decree that awarded her ownership of the business.

Bostwick explained the person or entity that resides in or utilizes a commercial space is responsible for the account. An account will be in the name of the person or entity who uses the site. The record demonstrated that the Colts Neck Inn had been operating at the site since 1989, under the name Mavrookas. Although the petitioner claimed that she was divorced from Peter Mavrookas, the respondent would not transfer ownership of a business without a divorce decree or other documentation of a settlement concerning the marriage as well as appropriate documentation concerning the new business. Also, the petitioner made contradictory statements concerning her marital status. She stated she was separated and divorced. Respondent determined that a bona fide new entity had not begun operating at the site. Rather, a family member had claimed but not established that a new entity was operating there.

⁵ Bostwick referred to an internal record that reflected that a final disconnection notice was issued on June 15, 2016. J-17. July 22, 2016, correspondence to the petitioner referenced a July 15, 2016, disconnection notice. J-48.

On cross-examination, Bostwick acknowledged that the petitioner did not participate in the negotiation or finalization of the 2015 deferred payment agreement. Peter Mavrookas was solely involved. She also acknowledged that she did not have information documenting that the petitioner was affiliated with County Comfort Inn, the company with which Dino Mavrookas was affiliated. The petitioner was never a customer of record for the Colts Neck Inn and the respondent's records did not reflect any communication with the petitioner concerning the account at issue prior to June 24, 2016.

Patrick Hughes was a security investigator for the respondent for twenty-two years. He was responsible for researching customer accounts and public records concerning customer accounts. Bostwick told him that the petitioner had denied any prior connection to the Colts Neck Inn, while her driver's license indicated her full name was Kim Notte-Mavrookas. Bostwick asked him to review records concerning the Colts Neck Inn property.

Hughes found that, in July 1997, George and Mary Mavrookas transferred ownership of the Colts Neck Inn to Peter Mavrookas and the petitioner for \$1.8 million. J-85. In June 1997, a certificate of incorporation was filed for a company called GABGEO, Inc. Peter Mavrookas was its president, agent for service and member of its Board of Directors. J-98. On December 5, 2001, Peter Mavrookas and the petitioner executed a deed transferring the Colts Neck Inn to Peter Mavrookas for one dollar. J-88. GABGEO operated the Colts Next Inn until its second bankruptcy in 2012. LKY II filed its certificate of incorporation in December 2011. J-101.

On December 5, 2012, during GABGEO's bankruptcy proceeding, the petitioner filed an objection to the proposed transfer of GABGEO's liquor license for the Colts Neck Inn restaurant. In her filing, she identified herself as a party in interest and creditor of GABGEO. J-105. She asserted she lent GABGEO \$500,000 to pay taxes it owed. She contested the sale of the liquor license to a new corporate entity that was owned by a family member because the sale would "prejudice the estate, and will not

benefit creditors[.]” J-105. She added, “the separate sale of the property will greatly reduce the value of the estate.” Ibid.

Hughes reviewed records in an effort to confirm the petitioner’s marital status. On June 22, 2016, he conducted a search using a database that helps to verify residences. His search revealed that the petitioner and Peter Mavrookas resided at the same addresses over a period of time and continued to do so at the time she contacted the respondent in June 2016. The database also listed the address for the Colts Neck Inn for both the petitioner and Peter Mavrookas. R-262.

Hughes also reviewed records produced by the Township of Colts Neck to determine whether a new business had registered to conduct business at the Colts Neck Inn. He found no records indicating that the petitioner or her purported company, Love Grace Peace, LLC, were bona fide new tenants or operators. None of the applications that would ordinarily be filed by a new business, for permits and inspections, had been filed. Also, there was not a new certificate of occupancy or mercantile license⁶ and required fire inspections had not been requested. J-260, 261.

Based on records concerning the petitioner and Peter Mavrookas’ residences, it appeared to Hughes they shared a common residence, which was inconsistent with the petitioner’s claim that they were no longer married at the time she contacted the respondent. Hughes also found evidence of petitioner’s interest in the Colts Neck Inn when her husband was the sole owner. He also found no proof that the petitioner or her company had established operations at the Colts Neck Inn. Given the prior claims by other people associated with the Colts Neck Inn that a new business had assumed operations at the site, in an apparent attempt to avoid paying then-overdue bills, it appeared that the petitioner had similarly attempted to void a debt by claiming she was operating a new business.

⁶ Hughes sought these documents again in 2017. None was located.

On cross-examination, Hughes acknowledged that the petitioner is not listed as a principal of GBGEO or LKY II on any filings with the New Jersey Secretary of State. He did not visit the Colts Neck Inn to determine who was working there.

For the petitioner:

Kim Notte Mavrookas⁷, the petitioner, married Peter Mavrookas July 1, 1989. She and Peter resided together in a home for thirty years. Only the petitioner was listed on the deed for that home. She sold the home and purchased a new home in Monmouth Beach, New Jersey, where she resided at the time of the hearing. Hers was the only name on the Monmouth Beach deed. Peter lived with her in Monmouth Beach at the time of the hearing. They were "getting divorced"⁸ and he had "nowhere else to go." (T69:18-20). She intended to sell the Monmouth Beach house; Peter would get some of the proceeds and then move to his own home.

The petitioner operated day care centers in Asbury Park and Neptune for thirty years. She began the businesses before she was married. She "supported" her family with the income from these businesses. (T73:4). Peter had no interest in the businesses and did not have an "interest in the running of the companies." (T73:20-22). She always paid the New Jersey Natural Gas bills associated with these businesses.

The petitioner was not involved with the daily operations of the Colts Neck Inn before she became "involved as an entity in [the] company." (T74:23-24). Her husband's family, led by his father, ran the business. She explained, "I could not say anything, I couldn't even say to bring in more housekeeping. My opinion meant nothing." (T75:14-16). She did not go to the Inn before she obtained her lease for the site. She did not want to be involved.

⁷ Petitioner filed her complaint as "Kim J. Notte, t/a Colts Neck Inn Hotel and Residence". When sworn as a witness she stated her name as "Kim Notte Mavrookas".

⁸ The petitioner filed for divorce on September 18, 2018. P-4. Peter did not file an Answer and the petitioner filed a Request and Certificate to Enter Default on February 12, 2019. P-5.

She also had no involvement with GABGEO or LKY II. Although she knew these companies operated the Colts Neck Inn at different times, she did not know when this occurred. She was neither permitted nor wanted to be involved and was occupied with her own businesses.

In 1997, George and Mary Mavrookas, the petitioner's father-in law and mother-in-law, wanted to refinance the business. As the petitioner had good credit, she permitted them to use her name to get the mortgage. Her name was later "taken off" because she had nothing to do with the company. (T77:15). She never paid the mortgage and did not received a benefit, such as a paycheck. She transferred the deed to her husband for one dollar "to get [her] name off of it. . . . So for my name to be on something that I cannot help control, good or bad – again, I wasn't involved with the company. I had nothing to do with it." (T78:18-21). The petitioner's tax returns for 2015, 2016, and 2017, reflected that she had no interest in or income from the Colts Neck Inn. She filed her returns separately from Peter. P- 6 to 8. All of her income was derived from property she owned and her preschools.

The petitioner explained that, because she had no role with respect to the business, she had no responsibility, obligation or involvement with paying its utility bills. Peter did not tell her about the utility debt or that he arranged a payment plan with the respondent. She did not participate in the negotiation of the payment plan.

Although she was not responsible for tax obligations, petitioner paid the business' overdue taxes. She took a home equity loan to pay the \$500,000 debt "so they would not lock the doors on that place." (T63:10-11). The family was to have reimbursed her. She was, thus, a creditor of GABGEO or LKY II rather than an owner.

When the petitioner learned about the large outstanding utility bill, she contacted the respondent to understand why the bill was so high.

[W]hen I researched to find out how could it possibly even get that high, again, I have businesses, how could a bill –

why would New Jersey Natural Gas allow a bill to even get that high, was my biggest question, when I did call.

I mean, I agree with 99 percent of the things they have said. That was ridiculous . . . When I finally came in and asked to have it put . . . I'm coming in now, I need to have it in my name, when I found out there was a bill of \$20,000-something that was being worked down, I had to find out why. How could you let it get that high?

And, again, it was a broken meter. Well, what does that have to do with me if there was a broken meter? Go after the person who was there when there was a broken meter. . . I had nothing to do with it.
(T 81:3-25).

The petitioner decided to operate the Colts Neck Inn to recoup the \$500,000 she used to pay the overdue taxes. On June 21, 2016, she signed a lease with ZJJ Holdings, Inc., the landlord for the Colts Neck Inn. P-1. ZJJ Holdings, Inc. had purchased the property when it was in foreclosure. Starting May 2016, she paid rent to ZJJ Holdings and made her payments in a timely fashion. She explained her rationale and goal:

I made an agreement with the person who bought it at foreclosure, and I have gone in there every day and have worked every day. I have changed that place around. I started a whole new company, and I'm recouping some of that \$500,000, which I would have never seen unless I did this. I have two children who I pay for their education. Plus I'm still paying that \$500,000 every month that they owe me. So, again, I'm trying to get that money back and I'm getting it back. I'm recouping it by working.⁹
(T85: 9-21).

She explained that the Inn was not the same entity as when her husband operated it. The fire department conducted an inspection one week prior to the hearing. All inspections are under the name of her company, Love Grace Peace. She created Love Grace Peace after the property was foreclosed upon and Elliott Braun purchased it. Elliott Braun signed the lease for ZJJ Holdings, Inc. P-1. Her company

⁹ The petitioner testified that she believed her \$500,000 loan was discharged when her husband's company went bankrupt. She was not reimbursed for the loan.

was assigned an Employer Identification Number on June 14, 2016. P-2. A Certificate of Formation was issued by the New Jersey Division of Revenue and Enterprise Services on June 14, 2016. Ibid.

The petitioner largely retained the staff that worked at the Inn prior to her taking over. She explained this was necessary due to her lack of familiarity with the business:

There was some change of personnel. But, again, I was never involved in the Colts Neck Inn or the hotel business at all. I'm a day care worker, a preschool worker, teacher, so I wasn't involved, I knew nothing about it. I kept the staff that was there at the time. Some people I did terminate. People that were there that were good I kept. I didn't know the business at all. . . . [General Manager Grace] knew the business, she trained me, she showed me everything, and she is still there.
(T91:6-18).

Grace ran the day to day operations of the Inn. She taught the petitioner all aspects of its operation, the customer check-in process, maids' schedules, billing, maintenance and washer and dryer operation. The petitioner was at the Inn every day for the first two years and sometimes slept there. At the time of the hearing, she would be there a minimum of two days per week, as she also reported to her other businesses. She was recouping the money she lent to the prior business for its tax debt.

With respect to the petitioner's statement to NJNG that she was not married when she was, in fact, still married, she believed her marital status was irrelevant because she had no involvement with her husband's business. The petitioner acknowledged that prior attempts by others to claim a new entity was operating the Inn were likely made in an effort to avoid paying past due NJNG bills. She, however, did not do this as hers was a truly new entity. She suggested a review of hotel booking websites would document that she had established a new entity. Further, Peter Mavrookas had no role with her company. He had no decision-making authority

concerning the Inn's operations; could not write a check on behalf of the Inn; and was unable to negotiate contracts.

With respect to the petitioner's NJNG account, she has paid her bills and service had not been suspended. She did not pay the past-due amount owed by the prior operator of the site. She has multiple NJNG accounts in her name and all are current.

On cross-examination, the petitioner listened to a recording of her conversations with a NJNG representative.¹⁰ She testified that she did not say she was married to Peter Mavrookas. Although she said that she was divorced, she did not intend to mislead NJNG. She was "emotionally divorced" from her husband in 2016. (T117:10-11).

The petitioner acknowledged that, as of the date of the hearing, she was not divorced from her husband and she filed her Complaint for Divorce September 18, 2018. She further acknowledged she wrote in her March 2017, complaint against NJNG, "Peter Mavrookas is my ex-husband[.]" She explained that she "considered" him to be her ex-husband notwithstanding they were legally married. (T103:20).

Grace Caputo worked for the Inn since 2004. She became its manager in 2013, when Peter Mavrookas ran the business. She reported to and took direction from him. He signed contacts and checks on behalf of the business. The petitioner had no decision-making role with respect to the Inn and Caputo had no "dealings" with the petitioner until 2016. (T122:5). In approximately May 2016, the petitioner approached her and advised that she had a lease for the site. The petitioner asked Caputo if she wanted to continue working for the Inn as its manager. The petitioner explained that she had day care centers and did not know about the property management system and the Inn's day to day operations. Caputo helped train the petitioner concerning the property management system, reservations, housekeeping and food service.

¹⁰ Petitioner's counsel objected to the admission of the recording, as he was not provided a copy of it in discovery. Counsel did not contest the authenticity of the recording. (T114:11-12). The petitioner acknowledged that she participated in the conversation and her voice was on the recording. (T113:25).

The petitioner had authority over contracts and signing checks; Peter Mavrookas did not have such authority. Peter Mavrookas did not have any authority with respect to the business.

Audio recording

I listened to the audio recording of the petitioner's phone conversations with a NJNG representative. J-18. On June 24, 2014, petitioner called NJNG and said she was "calling in reference to paying a bill." She provided the account number and tax identification number associated with the NJNG account. She stated the account was under "LKY". She said she wanted to pay some of the bill and asked what was due. The NJNG representative told her a deferred payment arrangement had been established; monthly payments of \$1,084.21 were to be paid for twenty-five months. The last bill that had been issued, on May 31, included the current amount then due plus the deferred payment, which totaled \$3,489.59. Petitioner did not know this much money was owed and advised the NJNG representative that, although the account is still in the prior corporation's name, that entity no longer operated at the site. She did not want the service to be disconnected. She advised she would change the name on the account.

The NJNG representative asked petitioner to provide proof that she took over the property and that the name of the company will change. Petitioner agreed to send her company's tax identification number and the date her company took control of the site.

A second phone conversation was initiated by Gail, an assistant to the NJNG supervisor who was working on the account. She called the Colts Neck Inn and asked to speak with petitioner. Gail said that although she received a copy of the lease from petitioner it was unclear who owned the site. Petitioner said Elliott Braun was the owner, although his name was not on the lease. Gail asked who Peter Mavrookas was; petitioner replied he was one of the prior people who owned the site. Gail advised that her records indicated the prior owners still owned the property. Petitioner advised the records were incorrect because the property had been foreclosed upon the prior month.

Gail reiterated that she had no information about the foreclosure and, as there was a very large outstanding balance, the balance due must be paid before the service could be transferred to another entity. Petitioner said she would provide information about the foreclosure and the name of the new owner who bought the property after the foreclosure. Gail asked petitioner if "Peter" is her husband. Petitioner replied, "Not anymore." Gail advised she would ask the NJNG collection department to defer disconnection of service to the property.

Gail called petitioner a second time to inquire about the status of the materials petitioner was to send. Gail advised that service was scheduled to be turned off Wednesday unless the materials were received by the following day. Petitioner said she would provide the materials by the following day.

Gail called petitioner a third time. Petitioner had provided the foreclosure documents but Gail needed to confirm who was responsible for the outstanding debt before the account could be placed in petitioner's name. Gail noted that petitioner and her ex-husband were then listed as defendants in foreclosure documents. Petitioner advised she was included because she was a creditor and was still owed money. Gail advised petitioner the legal department was reviewing the account.

Gail called petitioner a fourth time and advised that petitioner's application for new service was rejected. The gas service account would, thus, not be transferred into petitioner's company's name. A letter explaining the reason for the rejection was forthcoming.

Additional Findings of Fact

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness' testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. "Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and

observations of mankind can approve as probable in the circumstances." In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness' interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the petitioner during the hearing. She primarily testified in a calm manner; however, she became agitated and somewhat argumentative on some occasions. This could reasonably be attributed to upset over the circumstances that caused the need for a hearing. However, her testimony was inconsistent or incredible in significant ways.

First, it is undisputed that petitioner did not tell the truth about her marital status. She claimed that she did not reveal her marital status when asked by NJNG because she determined that information was irrelevant and because she had no involvement with her husband's business. She also affirmatively attempted to mislead when she told Bostwick that she was divorced when she was not.¹¹

Petitioner's claim that she independently determined what was and was not relevant to NJNG suggests an intent to mislead to achieve a desired goal. Considered in conjunction with a history of other family members of business associates having attempted to eliminate a prior debt to NJNG by claiming the establishment of a new business at the site – something petitioner acknowledged – this misrepresentation appears to have been caused by something other than a simple misunderstanding.

Second, petitioner claimed that she was not previously involved with her husband's operation of the Inn. This is belied by the fact that the mortgage for the company was in her name, along with that of her husband. She claimed this was merely to facilitate obtaining the mortgage and that she did not receive a benefit, such

¹¹ During a July 28, 2016, conversation, petitioner told Bostwick she was divorced. Petitioner filed for divorce on September 18, 2018. In her March 2017, appeal of NJNG's determination, which initiated this matter, she referred to her husband as her ex-husband.

as a paycheck. However, her family intended to derive a benefit from the Inn and the mortgage remained in her husband's name for several years after her name was removed. They were married during these years. Further, she paid the company's \$500,000 tax debt, having taken a home equity loan to pay the debt. Although she expected to be reimbursed, she made the loan to help the business.

Third, although petitioner testified that she supported her family with the income she earned from two day care centers and rental properties she owned, she also testified that she devoted herself to the Inn full-time, for two years, after she assumed responsibility for it. She was at the Inn every day for the first two years and sometimes slept there. At the time of the hearing in this matter, she reported to the Inn a minimum of two days per week and also reported to her other businesses. She did not reconcile how she managed her other businesses and earned income during the two year period she was fully devoted to the Inn. Moreover, in an effort to recoup \$500,000, she opted to run an Inn -- which had just been foreclosed upon -- when she had no prior experience. She testified at length that she had absolutely no involvement with the Inn while her husband operated it and she had no other relevant experience. She testified that she needed to retain most of the Inn's staff because she needed them to teach her all aspects of its operations. Petitioner's explanation for assuming responsibility for a significant -- and presumably struggling -- business operation, notwithstanding her complete lack of relevant experience and other business obligations, strains credulity. Accordingly, considering all of the above testimony, I cannot find petitioner's testimony to be credible.

I also had the ability to observe the demeanor, tone, and physical actions of Bostwick and Hughes during the hearing. Each testified calmly, consistently and professionally. They relayed the history of their interactions with petitioner and their findings and conclusions in a clear and precise manner. They did not evidence any intent to make an adverse finding against petitioner. Rather, they were forced to reach the conclusion they did and they supported their determinations with relevant facts. I find their testimony credible. Similarly, Caputo testified credibly concerning her need to train petitioner about the Inn's day to day operations.

Accordingly, having considered testimony, documentary evidence, and audio recording, I **FIND** the following **FACTS**:

Petitioner had a long-standing financial and familial relationship with the Colts Neck Inn and her husband's company, which owned and operated the Inn, notwithstanding her lack of involvement with the Inn's day to day operations. Petitioner was married to her husband, Peter Mavrookas, when she claimed that she started a new business that intended to operate the Inn. When asked about her marital status by NJNG representatives, she withheld information or misrepresented the status of her information, in an attempt to mislead. There was no basis for innocent confusion or misunderstanding on the part of petitioner, as she admittedly chose to withhold information about her marriage and she did not file a complaint for divorce until over two years later.

Petitioner did not provide evidence supporting her assertion that she established a new business that was wholly distinct from the prior business that operated the Inn. She claimed that a review of hotel booking websites would demonstrate that the Inn was truly a new entity. She did not explain in what ways it was different. She did not identify the relevant websites or produce examples of these websites, excerpts of reviews, or other evidence supporting her claim.¹² She did not produce municipal records documenting approval to operate a new business in the Township of Colts Neck.

LEGAL ANALYSIS AND CONCLUSION

Pursuant to N.J.A.C. 14:3-7.1(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." "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

¹² Petitioner objected to the introduction into evidence of address records obtained by Hughes. The documents were generated by LexisNexis and the date they were generated is indicated on the documents. R-263, 264. Although they may be public records, they were not relied upon in a significant way to determine that the petitioner remained married and shared a home with Mavrookas. Her testimony, including but not limited to her statement that they lived together at the time of the hearing, was sufficient foundation for the above factual findings.

public utility bill. A customer may or may not be an end user, as defined herein." N.J.A.C. 14:3-1.1.¹³

Public utilities are required to file tariffs setting forth complete schedules and charges for all classifications of service provided, as well as all rules and regulations relating to rates and charges or services used or to be used. N.J.A.C. 14:1-1.3 "Each utility shall operate in accordance with its tariff at all times, unless specifically authorized in writing by the Board to do otherwise." N.J.A.C. 14:1-1.3(d). Each utility's tariff shall be made available for public inspection. In the event the tariff is inconsistent with promulgated regulations, the regulations shall govern unless the tariff's provisions are more favorable to the customer. N.J.A.C. 14:1-1.3(h), (i). A public utility's tariff binds all customers, regardless of their familiarity with its provisions. Application of Saddle River, 71 N.J. 14, 29 (1976).

Respondent's Tariff for Service, section 2.13, addresses the provision of service when there is an outstanding balance:

Service will not be supplied by the Company to former Customers until such time as any and all amounts or outstanding balances owed to the Company for previous service have been paid or otherwise discharged in accordance with N.J.A.C. 14:3-3A.9, as may be amended or superseded. Customers qualifying for Winter Termination Protection who have a prior outstanding balance due from their existing service location may have service restored upon the establishment of satisfactory payment arrangements. The Company may refuse to initiate service, or may discontinue service after proper notice and in accordance with N.J.A.C. 14:3-3A.2, as may be amended or superseded, to a residential applicant, or a member of the household then indebted to the Company for services provided by the Company at any location, if the Company reasonably determines that substantially the same household occupies the premises to be or being served. The Company may refuse to initiate service or may discontinue service after proper notice and in accordance with N.J.A.C. 14:3-3A.2, as may be amended or

¹³ "End user" means a person who receives, uses, or consumes electricity, gas, telephone, water or wastewater service. An end user may or may not be a customer of record, as defined in this section. Ibid.

superseded, to a commercial applicant, or an officer, director, general or limited partner, business associate, or other agent, of an entity then indebted to the Company for services provided by the Company at any location, if the Company has reason to believe substantially the same entity occupies the premises to be or being served.
<https://www.njng.com/regulatory/pdf/Tariff%208-1-19.pdf>
(emphasis added)

Petitioner contends she was operating a new business at the Colts Neck Inn and she is merely a tenant at that location. Petitioner has the burden of demonstrating by a preponderance of credible evidence that her business is not the same as the one that owes an outstanding balance to respondent. I **CONCLUDE** petitioner has not met this burden. Petitioner did not produce evidence documenting that her company is distinct from the indebted business. Rather, the preponderance of the evidence suggests petitioner had an interest in the prior business. Petitioner's explanations concerning her entanglements with the prior business and its owner, her then-husband, were insufficient to satisfy her burden in this matter. Petitioner also provided sworn testimony that she knowingly provided false information to respondent concerning her marital status in conjunction with her application for service.

Despite not having the burden of proof, respondent took efforts to establish many facts of this case, proceeding first with its case. Despite possessing a presumption of validity of its actions, respondent took care to demonstrate its analysis, which led to its reasonable belief that petitioner sought to establish a service account for an existing business.

Accordingly, I **CONCLUDE** that petitioner did not meet her burden of proof. Respondent properly denied petitioner's application for service and determined the outstanding gas service bill must be satisfied.

ORDER

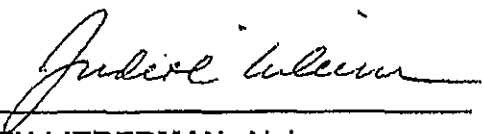
It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

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.

August 27, 2019
DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/v/

APPENDIX

LIST OF WITNESSES

For petitioner:

Kim Notte
Grace Caputo

For respondent:

Susan Bostwick
Patrick Hughes

LIST OF EXHIBITS

Joint

J-1A Attached chart listing all jointly stipulated documents. The documents bear the prefix "NJNG".

For petitioner:

P-1 Lease
P-2 June 14, 2016, IRS EIN assignment notice
P-3 May 5, 2016, IRS EIN assignment notice
P-4 September 18, 2018, Complaint for Divorce
P-5 February 12, 2019, Request and Certification to Enter Default
P-6 through 10 Tax returns
P-11 Account statements

For respondent:

R-262 through 264 LexisNexis Accurint search results (prefix "NJNG")

R-265 NJNG Tariff – BPU No. 9 Gas