



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

WILLIAM TAYLOR,)	ORDER DENYING PETITIONER'S
)	MOTION REQUESTING STAY
PETITIONER,)	
v.)	
)	BPU DOCKET NO. EC06020077U
JERSEY CENTRAL POWER & LIGHT COMPANY,)	OAL DOCKET NO. PUC 6811-07
)	
RESPONDENT)	

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

Before the Board of Public Utilities (Board) is a Motion by William Taylor (Petitioner) for a stay pending appeal of the Board's Final Decision, adopting the Initial Decision of Administrative Law Judge (ALJ) Douglas H. Hurd. The Initial Decision dismissed Petitioner's petition against Jersey Central Power & Light Company (Respondent) and ordered Petitioner to pay Respondent all amounts currently past due and owing for electric services. At the Board's February 11, 2009 agenda meeting, the Board considered Petitioner's Motion for Reconsideration. Because the Board's February 11, 2009 Order (Order) denying Petitioner's Motion for Reconsideration discussed the procedural history of this matter in great detail, it will not be repeated here. The Board does note that the Board's Order directed Petitioner to file a motion for a stay if so desired, as Petitioner had previously submitted two premature requests without supporting documentation, legal support, or adequate time for Respondent to respond.

On April 13, 2009, Petitioner filed a Motion for Stay Pending Appeal (Motion), along with a copy of a Civil Case Information Statement of the New Jersey Superior Court, Appellate Division. In order to expedite this matter the parties were notified by letter dated April 15, 2009 that this matter would be placed on the Board's April 27, 2009 agenda, and setting a procedural schedule. On April 16, 2009, Respondent filed its Response to Petitioner's Motion (Response).

¹ Commissioner Frederick Butler did not participate in this matter.

On April 22, 2009, Petitioner filed his Reply to the Response. The Board now considers Petitioner's Motion in totality with the filings.

Petitioner's Motion asserts that, because this is a private case between the parties and because Respondent is a financially viable entity, a stay will result in no harm to the public or to Respondent. Additionally, Petitioner asserts that he will suffer irreparable harm if a stay is not granted because he will need to forego certain laboratory, diagnostic, and other treatments for severely debilitating pathologies he has recently been diagnosed with.

Petitioner's Motion then addresses his likelihood of success on the merits, wherein he makes claims that his rights to procedural due process and fundamental fairness have been violated because he claims to not have received necessary discovery. He also claims that the ALJ's Initial Decision contains information not in the record. Petitioner bases this contention on his persisting view that Respondent's witnesses should not have been considered experts. Petitioner's Motion claims that the Initial Decision contains material inaccuracies, in that there was testimony by Respondent, as well as additional evidence that other residents were receiving low voltage, and that there is no record that Respondent placed a recording voltmeter on Petitioner's electric line on two occasions in April 2005. Petitioner, however, provides no support for these contentions. Petitioner goes on to state that there was no record that the recording voltmeter's drop in July 2005 was a slight drop and that the ALJ was incorrect in treating Petitioner's testimony as lay testimony.

In sum, Petitioner's Motion contends, that for all of the same reasons previously noted in Petitioner's Motion for Reconsideration, the ALJ's Initial Decision was inaccurate and did not meet the standards of N.J.A.C. 1:1-18.3.

Respondent's Response to Petitioner's Motion suggests that, although the amount owed by Petitioner is not in and of itself material to Respondent, the effect of awarding a stay in this matter would unjustifiably condone Petitioner's use of "self-help," and would constitute poor public policy that would ultimately be injurious to ratepayers. Respondent also contends that Petitioner's unsupported claim of eventual monetary hardship due to his alleged medical circumstances does not constitute immediate and irreparable harm. Respondent notes Morton v. Beyers, 822 F.2d 364, 372 (3d Cir. 1987), wherein the court indicated that while payment of money does not preclude a finding of irreparable harm, the harm must be such that monetary compensation does not remedy it.

Respondent further opposes Petitioner's Motion because Petitioner agreed voluntarily to a deferred payment plan in September 2008. After Petitioner's request the following month to be relieved from making payments under this plan, Petitioner was notified by the Board's Secretary that collection activity was postponed pending the Board's decision on Petitioner's Motion for Reconsideration. Respondent contends that Petitioner construed the Board Secretary's letter as a postponement of his obligation to pay both past and current bills, and that with Petitioner's current Motion, Petitioner is seeking to be relieved of the obligation to pay any portion of his utility bill until final outcome of the appeal in the Appellate Division. Respondent urges that this would result in immediate and unwarranted gain to Petitioner by way of free electric service during the pendency of his appeal, which Petitioner admits could take several years.

Lastly, Respondent argues that there is no likelihood that Petitioner will be successful on the merits of his claim, as Petitioner merely re-states the same arguments made in his Motion for Reconsideration, which the Board has addressed and rejected in its February 11, 2009 Order.

Furthermore, Respondent argues that Petitioner's Motion provides no support or citation for his claims that the ALJ's Initial Decision contains information not supported by the record.

On April 22, 2009, Petitioner filed a Reply to Respondent's Response (Reply). Petitioner states in this Reply that Respondent has "unclean hands." While unclear, it appears Petitioner supports this contention on the basis that Respondent sought to begin collection of all amounts due and owing after the Board's February 11, 2009 Order. Petitioner contends that Respondent reneged on the deferred payment agreement by forcing Petitioner to pay amounts due and owing in full, resulting in the termination of electric service on April 15, 2009.²

Petitioner further contends that this matter is not a billing dispute; rather, Petitioner believes this matter is a voltage dispute and that Respondent's characterization of the matter as a billing dispute is a red herring in order to hide fraud. Petitioner claims that Respondent's characterization of his actions as "self-help" is misguided, since the withholding of payment was the only way to induce the Respondent to act. Petitioner also reiterates that he will suffer immediate and irreparable harm. Specifically, Petitioner states that to the best of his knowledge, he will have to "forego some medical treatment, laboratory tests, which will adversely and irreparably affect the diagnosis, progress, and/or treatment medical care and of my health concerning my current pathologies if the BPU decision is not stayed pending an appeal." (Petitioner's Reply at 4).

Petitioner's Reply further addresses his likelihood of success on the merits, and provides nine sections supporting his contention that he will prevail in his appeal. First, Petitioner again claims he did not receive a substantial amount of discovery which has resulted in the violation of his rights to due process and fundamental fairness under the Fifth and Fourteenth Amendment to the United States Constitution and is contrary to the spirit of the law. Second, the ALJ and the Board relied on evidence not in the record, although here Petitioner merely discusses the legal standard, but provides no indication as to what the ALJ and Board considered that was allegedly not in the record. Petitioner also states that findings are inadequate, arbitrary, capricious, unreasonable, and unsupported by the facts, but does not specify what findings he is referring to or the reasons supporting this contention.

Petitioner then provides five detailed sections outlining what Petitioner believes to be material errors of fact and/or law contained in the ALJ's Initial Decision or the Board's February 11, 2009 Order. Petitioner points again, as he did at the hearing, in each of his exceptions, and in his Motion for Reconsideration, to the fact that Respondent changed the wrong transformer in 2003 and that there were other customer complaints. Petitioner now also asserts claims of fraud for alleged intentional misrepresentations made at the hearing by certain witnesses for Respondent. Such misrepresentations allegedly include statements concerning electricity meters and voltage regulators. Petitioner also takes exception again to the Initial Decision's conclusions that Petitioner's system was performing properly prior to changing the transformer.

Petitioner presents the same arguments with regard to expert testimony and lay testimony as was put forward in his Motion for Reconsideration. Petitioner now asserts, however, that large companies bestow the title of "engineer" on their long term employees with no formal education because of their training and experience garnered at the company over many years.

² The Board notes that Board Staff, upon learning that Petitioner's service was terminated on April 15, 2009, contacted Respondent, who agreed to reinstate Petitioner's service pending the outcome of this Motion.

Lastly, Petitioner claims that the Board's February 11, 2009 Order was not in good faith, not impartial, and not in compliance with due process, the requirements of impartial tribunals, and/or fundamental fairness pursuant to the New Jersey Administrative Code. Petitioner cites several lofty legal standards, but fails to relate them in any way to substance of the Board's eleven page Order on his Motion for Reconsideration.

DISCUSSION

The Board has carefully considered Petitioner's Motion, Respondent's Response, and Petitioner's Reply. In considering Petitioner's Motion, the Board is mindful that a stay pending appeal is an extraordinary equitable remedy which should be granted only when a movant establishes: (1) a likelihood of success on the merits, (2) irreparable injury to the movant absent a stay, (3) no substantial harm to other parties, and (4) no harm to the public interest. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); Parks v. Commerce Bank, N.A., 377 N.J. Super. 378, 387 (App. Div. 2005); Coskey's T.V. & Radio Sales v. Foti, 253 N.J. Super. 626, 639 (App. Div. 1992); Zoning Bd. of Adj. of Sparta Tp. v. Service Electric Cable Television of N.J., Inc., 198 N.J. Super. 370, 379 (App. Div. 1985). A stay is not a matter of right, even if irreparable harm may otherwise result. Yakus v. United States, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1944). Rather, it is an exercise of sound judicial discretion; the propriety of its issue is dependent upon the entire circumstances of a particular case, and "consideration of justice, equity and morality." Virginia Railway Company v. United States, 272 U.S. 658, 672-73, 47 S.Ct. 222, 228, 71 L.Ed. 463, 471 (1926); Coskey's T.V. & Radio Sales, *supra*, at 253 N.J. Super. 639 (quoting Zoning Bd. of Adj., *supra*, 198 N.J. Super. at 379).

Because a stay is the exception rather than the rule, GTE Corp. v. Williams, 731 F.2d 676, 678 (10th Cir. 1984), the party seeking such relief must clearly carry the burden of persuasion as to all of the prerequisites. United States v. Lambert, 695 F.2d 536, 539 (11th Cir. 1983). Further, mere monetary loss alone does not constitute irreparable harm. Morton v. Beyers, 822 F.2d 364, 372 (3d Cir. 1987).

IRREPARABLE INJURY

As noted above, the movant requesting a stay must show that irreparable injury will result absent the stay. Further, mere monetary loss alone does not constitute irreparable harm. Morton v. Beyers, 822 F.2d 364, 372 (3d Cir. 1987). In support of this contention, Petitioner states that, to the best of his knowledge, he will have to forego some medical treatment and laboratory tests, which will adversely and irreparably affect the diagnosis, progress, treatment, and health concerning Petitioner's current pathologies if the stay is not granted. Petitioner relies on Crowe v. De Gioia, 90 N.J. 126 (1982), that in certain circumstances severe personal inconvenience can constitute irreparable harm, and Parks v. Commerce Bank, N.A., 377 N.J. Super. 378 (App. Div. 2005), that a stay should issue when a relative hardship favors the party requesting relief, to support his contention. While the Board is sensitive to Petitioner's contentions, they do not rise to the level of irreparable injury. In essence, Petitioner is merely claiming that he will suffer monetary loss because he will be required to pay his utility bills. Furthermore, Petitioner voluntarily agreed to a deferred payment plan with Respondent, which was placed on hold until the Board's decision of Petitioner's Motion for Reconsideration. In the Board's Order, the Board ordered Petitioner to pay all amounts due and owing for electric services. Petitioner has apparently made no payments for either past due balances or current electric services since October 2008. Because of the foregoing, the Board does not believe that Petitioner has established a harm, other than monetary loss, that will be immediate and irreparable to Petitioner.

SUBSTANTIAL HARM TO OTHER PARTIES/ PUBLIC INTEREST

Petitioner claims that Respondent will suffer no harm if Petitioner's Motion for a stay is granted. Respondent counters that, although the amount owed is not in and of itself material to Respondent, Respondent would nonetheless suffer harm by the promotion of unjustifiable "self-help" behavior. The Board concurs with Petitioner, in so far as the amount owed to Respondent is not material so as to cause direct harm. The Board, however, is also cognizant of the effect of such an order on public policy, and does not wish to condone Petitioner's willful resistance to pay even the undisputed portions of his utility bills. Therefore, the Board finds that, while no substantial direct harm will be suffered by Respondent, there is a risk of indirect harm to Respondent and to the public interest should the stay be granted.

LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioner has failed to show that he will likely succeed on the merits of his appeal. His Motion is largely a restatement of substantive and procedural arguments that Petitioner has addressed several times in his exceptions, and to which the Board addressed in detail and denied in its February 11, 2009 Order. To the extent that Petitioner raises the same arguments, albeit restated in different terms, the Board notes its careful analysis in its Order and reaffirms its Final Decision.

In an effort to address the arguments that Petitioner raises for the first time in this Motion, the Board will discuss briefly Petitioner's likelihood of success on the merits. First, in Petitioner's Motion and in his Reply, Petitioner claims his right to due process and fundamental fairness has been violated. To sum, the Board notes that this matter was before the OAL for approximately eight months before it went to hearing. During this eight months, Petitioner had every opportunity to request certain discovery from Respondent and request the assistance of ALJ Hurd in settling discovery disputes, if necessary, as was noted at the hearing. (See transcript at 11:16-24). Respondent argued at the hearing that discovery was provided to Petitioner. Nevertheless, these issues were discussed at the hearing, and ALJ Hurd clearly stated that he would ask Respondent for any discovery necessary to make a finding of fact or conclusion of law, if it had not already been provided. (See transcript at 12:7-10).

Petitioner's argument that the Initial Decision contains information that was not in the record because he objects to the classification of Respondent's witnesses as experts is also without merit. This issue has been discussed at length in the Board's Order, and Petitioner's arguments are no different than in any of his prior pleadings. To be clear, Petitioner's statements in his Motion and his Reply that there is no record that Respondent's employees were electrical engineers is not accurate. To the contrary, four of the six witnesses of the Respondent testified under oath to their qualifications as engineers. (See Board Order at 4). Petitioner states that all the witnesses testified that they were not experts; this is factually inaccurate. During the hearing, the witnesses testified to their expertise in certain fields, but admitted they were not experts in other fields. Petitioner's Reply now seeks to supplant his contention by a certification that Petitioner is familiar with practices in large companies, whereby such companies bestow the title of engineer on long time employees. As explained in the Board's Order, Petitioner had every opportunity at the hearing to object to the classifications of Respondent's witnesses and to cross-examine them as to their expertise or experience with Petitioner's matter, but he failed to do so. Therefore, the Board dismisses Petitioner's arguments, as it did in its February 11, 2009 Order, as there is ample evidence in the record.

Petitioner's additional contentions in his Motion are unsupported. Petitioner claims there is direct and indirect evidence that other residents were receiving low voltage and that there was a slight drop in Petitioner's recording voltmeter during the summer months of 2005. These contentions are merely statements of what Petitioner believes to be material inaccuracies and which have already been addressed in the Board's February 11, 2009 Order. Petitioner states there is no record that Respondent placed a recording voltmeter on Petitioner's electric line in April, 2005. To the extent this statement is relevant, it was never raised at the hearing, in any of Petitioner's exceptions, or in his Motion for Reconsideration.

Petitioner's Reply raises many of the same issues raised in his Motion, which in turn have been raised previously and denied by the Board in its February 11, 2009 Order. Specifically, and as noted above, Petitioner's due process and fundamental fairness arguments have been addressed several times. For clarification, however, the Board again notes that it has allowed a great amount of latitude to Petitioner in this matter. Additionally, Petitioner had an eight month period in which to gather the necessary information and prepare his expert witnesses for the April 11, 2008 hearing. Further, Petitioner failed to avail himself of the Office of Administrative Law (OAL) for assistance with discovery disputes, should any have arisen. Nevertheless, Petitioner had a full opportunity to present his case at the hearing, introduce evidence, put on witnesses, and cross-examine Respondent's witnesses. Petitioner was then given several substantial extensions of time to file exceptions and was provided with a courtesy copy of exhibits, despite the fact that he failed to bring copies of his own exhibits as instructed by the ALJ. Petitioner was also given a courtesy copy of the transcript, despite the fact that the process for obtaining a transcript is clearly outlined in N.J.A.C. 1:1-14.11 and Petitioner let months pass by before attempting to obtain the transcript.

Petitioner argues in his Reply that the findings are arbitrary, capricious, unreasonable, unsupported by the facts, and inadequate. Petitioner fails to explain what findings he is referring to, or why such findings are arbitrary, capricious, unreasonable, unsupported, or inadequate. Therefore, these unsupported statements do not increase Petitioner's likelihood of success on the merits of his appeal.

Petitioner claims he will likely succeed on the merits because the Initial Decision and Board's Order incorrectly relied on testimony from Respondent's witness that changing Petitioner's transformer was a conservative measure. The Board notes that this section of the transcript is unclear, and the analysis referred to as conservative may have applied to either Petitioner's transformer or the transformer that was incorrectly changed in 2003. Nevertheless, Petitioner's argument does not make him likely to succeed on the merits. Respondent's witness Frank Del Valle, testified that he installed a voltage recorder on Petitioner's home for one week in April, 2005, before Petitioner's transformer was replaced. The results showed no voltage problem. (See transcript at 175:7-19). Thereafter, Petitioner's transformer was changed in May 2005 and Petitioner's complaints of low voltage persisted. During cross examination, this witness also testified that once Petitioner's transformer was upgraded, another volt meter was placed on Petitioner's home from June 23, 2005 through July 5, 2005. Because at times during this period Petitioner's voltage was recorded under Respondent's tariff, Respondent took steps to remedy the voltage problem by a placing voltage regulator near Petitioner's home. To be clear, ALJ Hurd addressed these test results during the hearing, and Respondent explained that during peak demand periods such a result is not unusual and occurs only during the time of day where consumption is the greatest. (See transcript at 194:1-21). Additionally, as noted in the Board's Order, Respondent's witness Lawrence Hayes testified that the transformer substation serving Petitioner was operating without problems. (See transcript at 153-156). Respondent also

performed a “beast of burden” test which indicated no voltage irregularity. (Transcript at 208:9-25).

Petitioner again reiterates that the Board’s Order contains a material mistake in determining that Respondent received no complaints from the other residents that shared his transformer. Petitioner on the one hand states this is obvious because the Board was referring to the wrong transformer, and on the other complains that his neighbors were actually complaining of low voltage.³ The Board notes its discussion, *infra*, with regard to the clarity of which transformer Respondent’s witnesses were referring to. With regard to Petitioner’s claims of other neighbors complaints regarding low voltage, the Board again notes that there has been no evidence of such complaints. Indeed, Petitioner admitted at the hearing that he wanted his alleged billing problem corrected...so that [he] would have a normal bill as compared to what’s the billing in the rest of [his] street.” (See transcript at 77:7-8). Therefore, the Board is not persuaded that Petitioner’s restatement of his previous arguments prove that he will likely succeed on the merits of his appeal.

CONCLUSION

The Board notes that Petitioner’s Reply contains many arguments that fall outside the scope of his Motion and that have been previously addressed and denied in the Board’s February 11, 2009 Order, specifically, Petitioner’s contention that this matter is not a billing dispute, but instead a voltage dispute. As discussed in the Board’s Order, ALJ Hurd noted that nature of the billing dispute is due to the low voltage and Petitioner himself admitted that this matter involved a billing dispute. (See Board Order at 9). Petitioner’s claim of Respondent’s “unclean hands” because of Respondent’s efforts to collect past due amounts is a claim that was not raised in any of the previous filings. Therefore, the Board declines to consider Petitioner’s new claim. The Board further declines to consider Petitioner’s arguments of fraud regarding alleged misrepresentations by Respondent regarding the differences between the functional purpose of a meter and voltage regulator. These allegations were not raised at the hearing or in Petitioner’s exceptions. A motion for a stay is not the platform for Petitioner to reargue his case, add additional facts and evidence into the record, or raise new causes of action against the Respondent.

At several points throughout Petitioner’s Motion and Reply, Petitioner relies on Lister v. J.B. Eurell Co., 234 N.J. Super. 64, 560 (App. Div. 1989) to note that findings of the ALJ and the Board are not adequate if they merely summarize the evidence. The Board notes that it has carefully reviewed this matter at great length, along with the transcript of the hearing and all evidence in the record. The Board spent considerable time in evaluating Petitioner’s claims in this matter, including but not limited to, a review by the Board’s Division of Customer Assistance Staff and a technical review by the Board’s Division of Energy engineering Staff. After careful consideration, the Board finds that it reasonably reached its decision based on the sufficient credible evidence presented in the record, considering all of the proofs, and giving weight to its staff with expertise in the matter.

³ The Board notes that in support of this contention, Petitioner cites an unknown exhibit he allegedly introduced at the hearing as “P-”, see Reply at 11


After carefully considering Petitioner's Motion, Respondent's Response, and Petitioner's Reply, the Board HEREBY FINDS that Petitioner has not met his burden of proving all of the prerequisites for a motion for a stay. United States v. Lambert, 695 F. 2d 536, 539 (11th Cir. 1983). Therefore, the Board HEREBY DENIES Petitioner's Motion for a Stay.

DATED:

4/27/09

BOARD OF PUBLIC UTILITIES

BY:


JEANNE M. FOX
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

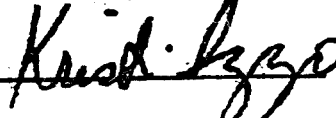

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

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



**WILLIAM TAYLOR
v.**

**JERSEY CENTRAL POWER & LIGHT COMPANY
BPU Docket No. EC06020077U
OAL Docket No. PUC 06811-07S**

SERVICE LIST

William Taylor
25 Victoria Drive
Annandale, New Jersey 08801

Michael J. Connolly, Esq.
Thelan, Reid, Brown, Raysman & Steiner
200 Campus Drive, Suite 200
Florham Park, New Jersey 07932

Eric Hartsfield, Director
Julie Ford-Williams
Division of Customer Assistance
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Kerri Kirschbaum, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102