



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

CHARLENE DUNN,  
Petitioner

)

ORDER ADOPTING INITIAL  
DECISION DENYING  
EMERGENT RELIEF

v.

NEW JERSEY NATURAL GAS COMPANY, AND  
JERSEY CENTRAL POWER AND LIGHT COMPANY,  
Respondents.

)

BPU DKT. NO. GC11100681U  
OAL DKT. NO. PUC 13714-11

Parties of Record:

**Peter A. Ouda, Esq.**, for petitioner, H. Alton Neff, Esq. on the brief  
**Eileen F. Quinn, Esq.**, Assistant General Counsel, for respondent, New Jersey Natural Gas  
Company

BY THE BOARD:

STATEMENT OF THE CASE

Charlene Dunn ("Petitioner") sought emergency relief concerning the discontinuation of her gas service by New Jersey Natural Gas Company ("Respondent").<sup>1</sup> On December 29, 2011, following the submission of briefs and exhibits by both parties and hearing oral argument, Administrative Law Judge ("ALJ") Elia A. Pelios denied Petitioner's request for relief finding no likelihood of success on the merits or demonstration of irreparable harm. For the reasons set forth herein, the Board of Public Utilities ("Board") adopts the Initial Decision of the ALJ on Petitioner's emergent application. Further, in accordance with N.J.A.C. 1:1-12.6, the Board ratifies the transfer of the emergent matter to the Office of Administrative Law ("OAL") by the agency head as within time.

<sup>1</sup> As noted by the ALJ in his Initial Decision, this emergent relief application does not involve Jersey Central Power and Light Company ("JCP&L"). However, JCP&L is involved in the underlying petition with the docket number referenced in this action.

## PROCEDURAL HISTORY

On or about October 21, 2011, Petitioner filed a petition with the Board requesting a formal hearing relating to a billing dispute with Respondent over gas utility service. ID at 2.<sup>2</sup> On November 16, 2011, the Board transferred the matter to the OAL as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. ID at 2. While the petition was pending, on December 14, 2011, Petitioner filed an emergent motion with the Board pursuant to N.J.A.C. 1:1-12.6, which the Board transferred to the OAL two days later. ID at 2. That matter was assigned to the ALJ on December 22, 2011. Ibid. The ALJ heard oral arguments on the motion on December 29, 2011 and authored an Initial Decision that day. ID at 1. For the foregoing reasons, the Board adopts the Initial Decision of the ALJ denying emergent relief to Petitioner.

## FINDINGS OF FACT

The ALJ properly outlined factual findings specific to the limited determination of Petitioner's entitlement to emergent relief, the standard for which is identified below. In this emergent action, Petitioner is seeking restoration of her gas service, which was disconnected in August 2011 due to tampering, theft and non-payment.

By way of background, Petitioner resides with her husband and their children at 17 Sailors Way, Middletown, New Jersey. ID at 2. In or around October 27, 2003, Respondent installed a curb valve due to its inability to gain access to the property. Rmb at 2. From October 2003 through 2009, Respondent disconnected and restored gas service to the premises several times due to non-payment. Ibid.

On June 17, 2009, Respondent terminated gas service to Petitioner's home from the curb valve. ID at 2. On November 11, 2009, Respondent attempted to remove the idle gas meters from the premises and was denied access. Ibid. On a return visit to the property in July 2011, Respondent again attempted to remove the meters and was denied access. Ibid. During that visit, Respondent checked the curb valve and discovered that the valve had been tampered with and damaged allowing the flow of gas into Petitioner's home. ID at 3. Respondent proceeded to disconnect the unauthorized flow of gas to the home by disconnecting the service line from the curb valve and capping the gas pipe. Ibid.

Two days later, Respondent was granted access to the premises and discovered that only one of two meters remained.<sup>3</sup> ID at 3. The second meter was presumed to be stolen. Ibid. In addition, Respondent noticed that the gas valves at the meter site were unlocked and in an operational position. Ibid. Based on historical usage estimates, Petitioner's estimated gas usage bill, including the use of unauthorized gas service from June 2009 through August 2011, is \$28,431.43. Ibid.

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<sup>2</sup> Hereinafter, citation to the Initial Decision will be abbreviated as "ID"; citation to the Petition will be abbreviated as "P"; citation to Respondent's brief in opposition to this motion will be abbreviated as "Rmb"; citation to Petitioner's moving brief will be abbreviated as "Pmb."

<sup>3</sup> On August 1, 2011, a writ of execution was issued against petitioner pursuant to a foreclosure action and a Sheriff's Sale was scheduled for January 3, 2012. ID at 3. There is no indication in the record whether that sale has occurred as of the date of this Decision.

As regards the underlying billing dispute, Petitioner denies owing the outstanding money and denies tampering with the service to the premises. ID at 3. Petitioner alleges that if emergent relief is not granted, she and her family will suffer irreparable harm resulting from lack of heat, lack of hot water, the possibility of pipes bursting, flood damage, and toxic mold. Pmb at 4.

Respondent argues that Petitioner does not meet the criteria for emergent relief and that this application should be denied. Rmb at 6. Respondent alleges that Petitioner breached several articles of Respondent's tariff, which authorizes termination of gas service for nonpayment, tampering with Company property, fraudulent representation, failure to provide reasonable access to premises, and the issuance of a writ of execution against the customer. Rmb at 9-10.

Respondent's paramount concern is safety and Petitioner's illegal and unsafe tampering with Respondent's underground curb valve, service line and meters cannot be rectified even if full payment were made. Rmb at 11. Respondent further argues that there is no assurance that Petitioner would not engage in further illegal tampering and theft if given the opportunity. Ibid. Respondent seeks to sever its relationship with Petitioner who could seek an alternative source of fuel such as propane. Rmb at 12. Furthermore, Respondent contends that there is no irreparable harm since there is no immediacy of pipes bursting and any claim of "immediacy" results from circumstances that Petitioner created. Rmb at 7.

### **DISCUSSION AND FINDINGS OF LAW**

The criteria for reviewing an application for emergency relief pursuant to N.J.A.C. 1:1-12.6 are the same as those that apply to injunctive relief and are well settled. For emergency relief to be granted, the moving party must show that:

- (1) the movant will suffer immediate and irreparable harm if the emergency relief is not granted;
  - (2) the legal right underlying the movant's claim is well-settled;
  - (3) there is a reasonable probability that the moving party will succeed on the merits; and
  - (4) the balance of the equities in granting or denying relief weighs in the movant's favor.
- Crowe v. DeGioia, 90 N.J. 126, 133-35 (1982).

Based on the totality of evidence relevant to this determination, the ALJ correctly determined that Petitioner is not entitled to emergent relief.

First, the Court's determination that Petitioner fails to meet the standard of immediate and irreparable harm is reasonable and consistent with the evidence. To demonstrate harm, Petitioner claims that the lack of gas service and heat has had an adverse impact on her family's health and could result in the bursting of frozen pipes, flooding, and toxic mold. Pmb at 5; ID at 4.

"It is entirely settled that a preliminary injunction will never be ordered unless from the pressure of an urgent necessity. The damage threatened to be done, and which it is legitimate to prevent, during the pendency of the suit, must be, in an equitable point of view, of an irreparable character." Citizens Coach Co. v. Camden H. R. Co., 29 N.J. Eq. 299, 303 (1878). Injury that can be remedied through monetary compensation has not been held to meet those criteria. McNeil v. Legislative Apportionment Comm'n of New Jersey, 176 N.J. 484, 486 (2003), citing, Crowe v. DeGioia, *supra*, 90 N.J. at 132-33.

With respect to the possibility of the pipes freezing, bursting and flooding the home, the ALJ correctly noted that such claims are speculative at best and lack the immediacy necessary to a determination of irreparable harm. ID at 4, citing, Continental Group v. Amoco Chemicals Corp., 614 F. 2d 351, 359 (D.N.J. 1980). The ALJ further notes that by Petitioner's own admission, her family fails to qualify for gas service under N.J.A.C. 14:3-3A.5 (a) and therefore, no per se irreparable harm exists due to the lack of gas service. ID at 5.

As regards the claim of harm resulting from the absence of heat, Petitioner maintains that both the home and the garage apartment are heated with electricity. P at 14, 17. Therefore, there is no indication how the lack of gas service to heat the home would cause irreparable injury. Furthermore, even if the home were heated by gas, Petitioner does not dispute the availability of electricity in the home that would allow for the use of electric heaters.

The ALJ's finding that Petitioner fails to meet her burden of showing a reasonable likelihood of success on the merits is also supported by the record. As the Initial Decision details, Respondent's tariff is the legal document controlling Petitioners' contractual claims. Application of Saddle River, 71 N.J. 14, 23 (1976). Both the tariff and state law authorize discontinuation of service for nonpayment, tampering with any facility of the utility, fraudulent representation, refusal of reasonable access, the issuance of a writ of execution and the where condition of the customer's installation presents a hazard to life or property. ID at 6. Each of these violations has been cited by Respondent as a reason for discontinuation of service and Petitioner has not met her burden to overcome these allegations at this stage of the case. ID at 7.


Finally, the balance of the equities lies in favor of denying the motion. Despite any inconvenience from not having gas service, that inconvenience pales in comparison to the harm that could result to the public if Petitioner's gas service is restored and unauthorized tampering continues. Respondent's equipment involves the delivery of highly pressurized and flammable natural gas. Rmb at 13. The curb valve distributes gas at 60 pounds per square inch ("psi") as compared to the ¼ psi reduced gas pressure when the gas enters the home through a regulator located at the meter. Ibid. In Petitioner's case, a meter was missing from the home resulting in the entry of highly pressurized gas into her home from the tampered curb valve. Given the tremendous safety hazard this creates, equity lies in favor of denying the requested relief.

**DECISION**

For the reasons set forth in the Initial Decision and the rationale set forth herein, the Board **HEREBY ADOPTS** the Initial Decision of the ALJ whose findings of fact and conclusions of are reasonable and in accordance with law. Further, in accordance with N.J.A.C. 1:1-12.6, the Board ratifies the transfer of the emergent matter to the Office of Administrative Law ("OAL") by the agency head as within time.

DATED: 2/10/12

BOARD OF PUBLIC UTILITIES  
BY:

  
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PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

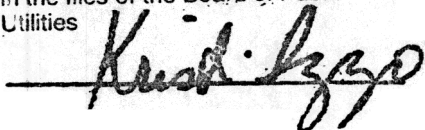
  
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SECRETARY

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



CHARLENE DUNN  
V.

NEW JERSEY NATURAL GAS COMPANY AND JERSEY CITY POWER AND LIGHT  
COMPANY

BPU DOCKET NO. GC11100681U  
OAL DOCKET NO. PUC13714-11

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