



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

MARC HOLLOWAY,	)	ORDER ADOPTING INITIAL
Petitioner	)	DECISION IN PART AND
	)	REJECTING IT IN PART
v.	)	
	)	
NEW JERSEY NATURAL GAS COMPANY,	)	BPU Docket No. GC10050329U
Respondent	)	OAL Docket No. PUC 12383-11

**Parties of Record:**

**Marc Holloway**, Petitioner, pro se  
**Eileen F. Quinn, Esq.**, on behalf of Respondent, New Jersey Natural Gas Company

**BY THE BOARD:**

By petition filed with the Board of Public Utilities (Board) on May 12, 2010, Marc Holloway (Petitioner) challenged a bill for service rendered by New Jersey Natural Gas Company (Respondent). After receipt of Respondent's answer, this matter was transmitted by the Board to the Office of Administrative Law (OAL) for hearing as a contested case and the matter was assigned to Administrative Law Judge (ALJ) Ana C. Viscomi.

A hearing in this matter was scheduled for March 9, 2011. As a result of Petitioner's failure to appear, ALJ Viscomi, pursuant to N.J.A.C. 1:1-14.4(d), issued an "Initial Decision Failure to Appear" which was submitted to the Board on April 28, 2011. By Order dated July 14, 2011, the Board issued an Order of Remand based on a written explanation submitted by Petitioner regarding his failure to appear. The Board's Order of Remand stated in pertinent part that:

Petitioner is reminded, however, that in pursuing his claims, he is expected to comply with applicable procedural rules and bears the burden of proof by a preponderance of the competent credible evidence as to those matters which are justiciable before the OAL.

[Order of Remand at 4].

Subsequently, ALJ Viscomi issued a letter, advising that she intended to conduct a plenary hearing on one of five specified dates, November 9, 14, 15, 16, or 17, 2011. ALJ Viscomi requested the parties to advise her in writing of their availability for hearing by November 1, 2011. On November 1, 2011, Petitioner advised in writing that he would be available on November 17, 2011. Notice scheduling the hearing for November 17, 2011 was mailed to the parties through the United States Post Office by the OAL Clerk's office on November 1, 2011. None of the notices was returned as undeliverable.

On November 17, 2011, Respondent appeared before ALJ Viscomi but Petitioner did not. By Initial Decision issued on November 18, 2011 and submitted to the Board on November 29, 2011, ALJ Viscomi adopted by reference her prior Initial Decision wherein Respondent had proceeded on the proofs. Accordingly, she dismissed the petition for failure to appear and directed that Petitioner pay to Respondent the outstanding bill for services rendered of \$2,758.05. She further recommended that, should Petitioner submit an untimely explanation of his non-appearance, the Board require Petitioner to pay Respondent's counsel and witness one hour and forty-five minutes of their respective waiting time at the scheduled hearing.

By letter dated December 5, 2011 and addressed to the attention of Secretary of the Board, Petitioner acknowledged that he had advised both ALJ Viscomi and NJNG's counsel that he was available on November 17, 2011 for a hearing on the matter. He stated, however, that he never received any further information regarding the hearing. Accordingly, Petitioner requested that the matter be rescheduled for hearing. Petitioner's letter was not received by the Board until January 4, 2012, and by responding letter of January 10, 2012, Eileen F. Quinn, Esq., NJNG's counsel, indicated that Respondent received the letter on December 28, 2011.

On January 10, 2012, NJNG submitted documentation to the Board responding to Petitioner's letter. The Company stated that it respectfully objected to another hearing because Mr. Holloway's explanation for his failure to appear contradicted the actual facts and he was merely trying to prolong the final resolution. NJNG claimed that a simple review of the history in this case indicates that Mr. Holloway acknowledges receipt of documents that are helpful to him in prolonging his claim and denies receipt of items pertaining to the two previous hearing dates.

An explanation regarding a failure to appear "...must be in writing and received by the transmitting agency head within 13 days of the date of the clerk's notice returning the case" with a copy of the explanation served on all parties. N.J.A.C. 1:1-3.3(b).<sup>1</sup> The Initial Decision was dated November 19, 2011, but was not received by the Board until November 29, 2011, the same date as the file was returned to the Board. Even using the latter date as the starting point, Petitioner's written explanation was received by the Board well out of time. Nonetheless, the explanation merely states that Petitioner never received notice of the hearing although there is nothing in the record to indicate that the notice was returned to OAL as undeliverable. Moreover, Petitioner acknowledges that he received the Initial Decision which was mailed to the same address as the scheduling notice. More importantly, Petitioner notes that he advised the ALJ and Respondent that he was available for hearing on November 17, 2011. Under these circumstances, and the fact that this constitutes the second time that Petitioner has failed to appear at a scheduled hearing, the Board finds the written explanation to be insufficient to warrant a rescheduling of this matter. Accordingly, a rescheduling will not be ordered.

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<sup>1</sup> A party also has thirteen days from date that the initial decision was mailed to the parties, to file exceptions. N.J.A.C. 1:1-18.4(a).

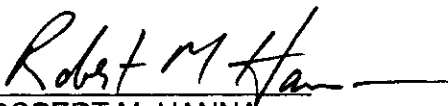
Notwithstanding, the Board will not impose sanctions on Petitioner. N.J.A.C. 1:1-14.4(c)1 provides that if an ALJ receives an explanation for a party's nonappearance and concludes that there was good cause for the failure to appear, the ALJ shall reschedule the matter for hearing. On the other hand, if the ALJ concludes that there was no good cause for the nonappearance, the judge may refuse to reschedule the matter and shall issue an initial decision, or may reschedule the matter and, at his or her discretion, impose sanctions, which may include the payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party. N.J.A.C. 1:1-14.4(c)2.


In this matter, ALJ Viscomi did not receive an explanation from Petitioner regarding his failure to appear at the scheduled hearing and, she issued an Initial Decision dismissing the petition. Therefore, ALJ Viscomi could not have ordered Petitioner to pay the expenses related to the waiting time of Respondent's attorney and witnesses under N.J.A.C. 1:1-14.4(c)2.ii. Instead, she recommended that the Board impose those costs.

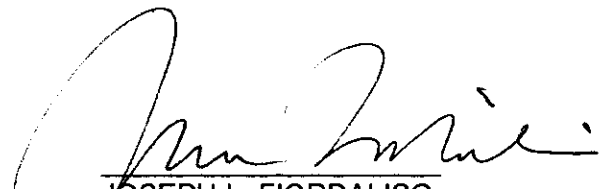
After review and consideration of the entire record, the Board HEREBY FINDS the findings of facts and conclusions of law of the ALJ to be reasonable and, accordingly, HEREBY ACCEPTS them. The Board HEREBY REJECTS the ALJ's recommendation that sanctions be imposed on Petitioner. Therefore, the petition in this matter is HEREBY DISMISSED.


DATED: 2/10/12


BOARD OF PUBLIC UTILITIES  
BY:


  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

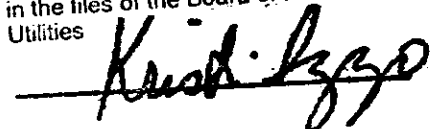
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HARDEN  
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



MARC HOLLOWAY

v.

NEW JERSEY NATURAL GAS COMPANY

BPU DOCKET NO. GC10050329U

OAL DOCKET NO. PUC12383-11

SERVICE LIST

Marc Holloway  
226 Ardmore Avenue  
Toms River, New Jersey 08757

Eileen F. Quinn, Esq.  
NJR Service  
1415 Wyckoff Road  
P.O. Box 1468  
Somerville, New Jersey 07719

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

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

CMS  
E. Beslow  
C. Vachier  
DAG  
RPA  
V. Haynes  
D. Lee-Thomas  
J. Ford-Williams  
R. Lambert.



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

BPU MAILROOM  
NOV 29 2011  
RECEIVED

**INITIAL DECISION ON REMAND**  
**FAILURE TO APPEAR**  
**PURSUANT TO N.J.A.C. 1:1-14.4**

OAL DKT. NO. PUC 12383-11 (ON  
REMAND PUC 7329-10)  
AGENCY DKT. NO. GC10050329U

*FWP*  
*12/1/11*  
RECEIVED  
CASE MANAGEMENT  
2011 NOV 30 AM 11:39  
BOARD OF PUBLIC UTILITIES  
REMARK, N.J.

**MARC HOLLOWAY,**  
Petitioner,

v.

**NEW JERSEY NATURAL GAS  
COMPANY,**  
Respondent.

Marc Holloway, petitioner, pro se

Eileen F. Quinn, Esq., for respondent

Record Closed: November 18, 2011

Decided: November 18, 2011

BEFORE ANA C. VISCOMI, ALJ:

In this matter, Mr. Holloway is disputing bills sent to him by New Jersey Natural Gas (NJNG). This matter was previously transmitted to the Office of Administrative Law (OAL) on June 9, 2010, for a hearing as a contested case, pursuant to N.J.S.A. 52:F-1 to -13 and N.J.S.A. 52:14B-1 to -15. It was scheduled for hearing ultimately on March 9, 2011, but as a result of Mr. Holloway's failure to appear, I issued an Initial Decision

Failure to Appear, pursuant to N.J.A.C. 1:1-14.4, which permitted *ex parte* proofs to be considered by me. The Board of Public Utilities thereafter considered an explanation submitted by Mr. Holloway, and on July 22, 2011, issued an Order on Remand, dated July 14, 2011. In that Order, the Board found evidence that it was the petitioner's intent to present his case as a result of the "curious yet plausible explanation" that he had forwarded to my attention after the closing of the record before me but which I had considered and rejected. The Board indicated on the fourth page of its Order on Remand that:

Petitioner is reminded, however, that in pursuing his claims, he is expected to comply with applicable procedural rules and bears the burden of proof by a preponderance of the competent credible evidence as to those matters which are justiciable before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962).

Thereafter, the file was transmitted to the OAL by date of October 17, 2011. As a result, my secretary forwarded a letter to both counsel for New Jersey Natural Gas, Eileen F. Quinn, Assistant General Counsel, and to Mr. Marc Holloway at the address he provided to Board and the OAL -- 226 Ardmore Avenue, Toms River, New Jersey 08757. That letter, (C-1), dated October 19, 2011, indicated:

Dear Parties:

The above-captioned remanded matter has been assigned to me for hearing. I intend to conduct a plenary hearing in this matter on one of the following dates: November 9, 14, 15, 16 or 17, 2011.

Please advise, in writing, no later than November 1, 2011, of your availability on the above proposed hearing dates. Absent any written response by November 1, 2011, I will schedule the hearing on peremptory basis for November 9, 2011.

Ms. Quinn, responded by letter dated October 26, 2011.

On November 1, 2011, the OAL Deputy Clerk received a phone call from someone representing herself as Mr. Holloway's secretary. The Deputy Clerk transferred the call to my secretary. I heard my secretary's discussion during this telephone call. My secretary advised me the individual identified herself as Mr.

Holloway's secretary. I heard my secretary then state that since Mr. Holloway is a pro se litigant; she is required to speak to him rather than through anyone else. My secretary advised that Mr. Holloway then spoke with her and inquired as to the status of his case. She had spoken to him before and thus was familiar with his voice. I then heard my secretary explain that he was a sent letter on October 19. My secretary advised that Mr. Holloway acknowledged receiving it but explained the letter did not tell him what to do. I heard my secretary state that the letter was self-explanatory and he should read and respond. She also told him that he had until that day, November 1, 2011, to respond and she provided him the fax number as he requested, although it is indicated on my letterhead. By facsimile of the same date, Mr. Holloway responded as follows (C-2):

Dear Judge Viscomi:

Please be advised that Mr. Holloway will be available on November 17<sup>th</sup> for the hearing of the above captioned matter.

Should you require further information please feel free to contact my office.

Sincerely,  
Marc Holloway

The Clerk's office issued the Notice of Hearing on November 1, 2011, directed to ~~Marc Holloway at the Ardmore Avenue address and to Ms. Quinn, the Board of Public Utilities and the court reporting service, indicating that the hearing in this case would be held on November 17, 2011, 9:00 a.m., Office of Administrative Law, in Mercerville.~~ (C-3). None of these notices, mailed through the United States Post Office, were returned as undeliverable.

At 9:00 a.m., on November 17, all parties, with the exception of Mr. Holloway, were present and ready to proceed. At 10:30 a.m. I asked Ms. Quinn to inquire of her office whether there was any message, call, or fax from Mr. Holloway to her office. Ms Quinn confirmed no such communication was received.

I also personally inquired of the OAL guard, Deputy Clerk and my office whether they received any phone calls, voice mail messages or faxes from Mr. Holloway regarding any difficulty in appearing at the OAL on November 17, 2011, to present his appeal. All of these individuals responded no such communication had been received.<sup>1</sup> Although OAL policy requires the judge wait one half-hour prior to dismissing the parties and witnesses in the event of a failure to appear by another party, in this matter, I waited one hour and forty-five minutes. At 10:45 a.m., I released Ms. Quinn, her witness, Patrick Hughes, and the court reporter.

In issuing the Remand Order, the Board was concerned that Mr. Holloway had expressed an intention to pursue this action in his explanation of non-appearance at the first scheduled hearing date. The matter, once remanded, was scheduled at a date selected by Mr. Holloway as confirmed in his correspondence of November 1, 2011. (C-2). He clearly received my communication to his Ardmore address and responded. An official Notice of Hearing was mailed, as required, to the address he provided and not returned by the US Post Office as undeliverable. The Board indicated in its Remand Order that the OAL did not contact the petitioner on the date of the first scheduled hearing or the day after to inquire of his whereabouts. It is neither the policy nor practice of the OAL to contact any party to inquire as to a non-appearance. Certainly exigent circumstances, such as inclement weather or significant traffic-related issues, are treated differently by the OAL. No such exigent circumstance presented itself in this matter. The Board also indicated in its Remand Order that petitioner is expected to comply with OAL applicable procedural rules. The rules require the non-appearing party to advise the judge of any difficulty in appearing for a scheduled proceeding. N.J.A.C. 1:1-14.4. Any difficulty expressed before the hearing would have resulted in a rescheduling of the hearing. No such communication was received at any time prior to the scheduled hearing date.

Having now held this matter for one day, before taking any action and having not received any explanation within that one day as required by N.J.A.C. 1:1-14.4, I hereby direct the Clerk to return this matter to the Board of Public Utilities for appropriate

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<sup>1</sup> The Deputy Clerk also confirmed no communication from Mr. Holloway with her respective staff of five clerks.



disposition. I also adopt herein, by reference, my prior Initial Decision – Failure to Appear of April 25, 2011, wherein the respondent proceeded ex parte on the proofs, pursuant to N.J.A.C. 1:1-14.4. Petitioner's appeal is hereby **DISMISSED** for failure to appear and I **ORDER** petitioner pay the respondent NJNG a total of \$2,758.05. In the event petitioner submits an untimely explanation of his non-appearance for this second scheduled hearing, I would recommend the Board require petitioner pay respondent's counsel and witness one hour and forty-five minutes of their respective waiting time at this scheduled hearing, upon the submission of the appropriate affidavits.

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.

OAL DKT. NO. PUC 12383-11

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, 2 Gateway Center, Suite 801, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 18, 2011

DATE

*Ana C. Viscomi*  
ANA C. VISCOMI, ALJ

Date Received at Agency:

11-18-11

Date Mailed to Parties:

/lam

NOV 22 2011

**LIST OF EXHIBITS**

- C-1 October 19, 2011, correspondence to parties to schedule hearing
  - C-2 November 1, 2011, response from petitioner regarding availability
  - C-3 November 1, 2011, OAL Notice of Hearing scheduling matter for November 17, 2011
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