



Agenda Date: 10/6/2021
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

JULES TONKINSON)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
v.)	
)	
SOUTH JERSEY GAS COMPANY,)	DOCKET NO. GC20060466U
Respondent)	OAL Docket No. PUC-06930-20

Parties of Record:

Jules Tonkinson, Petitioner, *pro se*
Van L. McPherson, III, Esq., for Respondent, South Jersey Gas Company

BY THE BOARD:

This matter is a billing and service dispute between Jules Tonkinson (“Petitioner” or “Tonkinson”) and South Jersey Gas Company (“SJG” or “Respondent”). This Order sets forth the procedural history and factual background of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10(c). Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on July 26, 2021 (“ID”) as follows.

PROCEDURAL HISTORY

On or about April 5, 2019, Petitioner submitted a request for a hearing to the Board, which was transmitted to the Office of Administrative Law (“OAL”) and assigned Docket No. PUC-06918-19 (“the 2019 Petition”). The 2019 Petition was ultimately settled and the matter withdrawn. On June 18, 2020, Petitioner filed a second petition, which was transmitted by the Board to the OAL on July 30, 2020 for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52: 14F-1 to -13 (“the 2020 Petition”). The 2020 Petition, which is the subject of the ID under review in this Order, was assigned OAL Docket No. PUC-06390-20 and assigned to Administrative Law Judge Kathleen M. Calemno (“Judge Calemno”).

On November 18, 2020 SJG filed a motion for summary decision seeking dismissal of the 2020 Petition on the grounds that it had been previously resolved by a settlement agreement approved by Hon. Jeffrey R. Wilson, ALJ, in OAL Docket No. BPU-06918-19. On December 15, 2020, Petitioner filed opposition to the motion that disputed that the subject matter of the 2020 Petition had previously been resolved. Petitioner claimed that the 2020 Petition concerned SJG’s refusal

to provide service to Petitioner at his new residence, located at 27 Aldridge Way (“New Residence”), and not a billing dispute regarding service previously provided by SJG to Petitioner at 8 Benner Road (“Old Residence”), which was the subject of the 2019 Petition. The motion was denied by way of a Letter Order issued by Judge Calemno on April 5, 2020 and an evidentiary hearing was scheduled. [ID at 2].

An evidentiary hearing was held via Zoom on July 2, 2021. The record remained open until July 7, 2021 to allow SJG to submit the billing statement for the Old Residence, which was designated as Exhibit R-7. On July 26, 2021, Judge Calemno issued an Initial Decision in favor of Respondent, denying the relief sought by Petitioner and dismissing the 2020 Petition. The Initial Decision was transmitted electronically to the Board. No exceptions were filed. By Order dated September 1, 2021, the Board obtained a forty-five day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

EVIDENTIARY HEARING

At the evidentiary hearing on July 2, 2021, the Petitioner testified on behalf of himself. [1T¹.44:12-66:10]. Sarah Miller (“Miller”), the Program Manager for SJG and a former Supervisor for Customer Service, testified on behalf of SJG. [1T.11:18-39:21].

Miller testified as to SJG’s procedures for recording phone calls and maintaining records of the same. SJG saves calls for a three (3) year period and could not produce actual recordings dating back to 2015, even though SJG still retained call notes from that time. [1T.30:13-30:23]. Miller reviewed SJG’s computerized account notes for Lisa Leonard (“Leonard”). The notes reflected that on April 9, 2015, Tonkinson called SJG to discuss Leonard’s account, but was denied because Tonkinson was not listed on the account. After SJG received authorization from Leonard, Tonkinson was added to the account for the Old Residence. (R-1). The customer information for the Old Residence account noted that there were two persons listed on the account, with Leonard as the main customer and Tonkinson listed as “Spouse.” Tonkinson’s social security number, telephone number and email address were included with the customer information maintained by SJG for the account. Miller testified that Tonkinson would have had to provide this information for it to be added to the account. [1T.15:18-16:7].

According to SJG’s records, on May 4, 2015, Tonkinson called SJG with questions about the billing statement for the Old Residence. (R-1 at 3). Miller explained that SJG’s computerized records for May 5, 2015 reflected that Tonkinson had been added as an authorized representative who had his own personal identification number. (R-1 at 4). Property tax records also reflect that Tonkinson and Leonard owned the Old Residence from 2015 through 2020. (R-2).

On July 24, 2018, during a recorded phone call from SJG to Tonkinson, Tonkinson told the representative that he was “on the account.” (R-3). On March 26, 2019, Tonkinson called SJG and indicated, “I got a discontinuation notice,” and asked to discuss the same. (R-4 and 1T.19:23-20:15). The SJG representative then proceeded to verify Tonkinson’s identity by asking the account address and security questions so that the account for the Old Residence could be discussed with Tonkinson. Id.

¹ 1T refers to the transcript of the July 2, 2021 hearing.

On October 14, 2019, Tonkinson executed a written settlement offer extended by SJG, dated July 16, 2019, to resolve the outstanding balance on the account for the Old Residence. (R-5). The letter specifically identified the account number and address and made reference to a matter pending with the OAL. Id.

When Tonkinson moved to the New Residence, he requested gas service in his name, but the request was denied because of the outstanding balance at the Old Residence. [1T.21:20-23:20]. Miller indicated that SJG's policy bars an existing customer from opening a new account until the balance on a previous account is satisfied. Id. Property tax records and the deed for the New Residence reflect that Leonard has owned the New Residence since June 2020. (R-6). Miller testified that Tonkinson and Leonard's children live at the New Residence and that Tonkinson wanted the gas service in his name. [1T.23:24-25:16].

In his testimony, Tonkinson disputed SJG's authority to deny him service at the New Residence for what he described as his wife's debt at the Old Residence. Tonkinson testified that he was authorized to speak to SJG about the account for the Old Residence, but never agreed to be financially responsible for the bill. [1T.45:6-47:25]. Tonkinson denied that his execution of the settlement agreement for the debt on the Old Residence rendered him responsible for paying the balance due on the account for the Old Residence. [1T.48:1-48:17]. Tonkinson admitted that he signed the agreement and verified that his voice appeared on the audio recordings played by SJG at the hearing. [1T.52:20-55:17]. While Tonkinson claimed his signature of the settlement agreement was on behalf of Leonard, he denied having authority to execute the agreement on behalf of Leonard, because he was not her power of attorney. [1T.50:13-50:24]. Tonkinson also testified that he asked that service be established at the New Residence where he resides with Leonard and their two children. [1T.44:19-45:5 and 55:18-56:9].

THE INITIAL DECISION

Judge Calemno found the following facts to be undisputed:

1. On June 8, 2020, Tonkinson contacted SJG to start service at the New Residence. SJG denied the request due to an outstanding balance at the Old Residence in the amount of \$2,225.85.
2. Tonkinson is married to Leonard. Before moving to the New Residence, they resided at the Old Residence and had gas service provided by SJG. There was a billing dispute regarding an outstanding balance at the Old Residence.
3. On April 5, 2019, Tonkinson filed a request for a formal hearing to resolve the billing dispute regarding service to the Old Residence. The BPU transmitted the matter to the OAL where it was assigned OAL Docket No. BPU-06918-19. On October 14, 2019, Tonkinson signed a letter acknowledging his acceptance of SJG's settlement offer resolving the matter. By email, dated October 22, 2019, to the Honorable Jeffrey R. Wilson, ALJ, Tonkinson withdrew his appeal stating that the matter had been resolved by a mutually agreeable settlement.
4. In accordance with the settlement agreement, SJG adjusted the account by a credit of \$276.66, leaving an outstanding balance of \$1,033.69. (R-7.) After the settlement agreement, no payments were made on the account. The current balance is \$2,277.93. Id.

5. The balance from the Old Residence was still outstanding when Tonkinson requested service in his name at the New Residence. SJG refused to provide service in Tonkinson's name at the new address until the outstanding balance from the Old Residence was satisfied.

[ID at 3].

Citing In re Estate of Perrone, 5 N.J. 514, 522 (1950) and Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958), Judge Calemno further made credibility findings with respect to the testimony offered at the evidentiary hearing. Judge Calemno found Tonkinson's testimony to be "incredible" because his denials of liability were inconsistent with his admissions, the recordings of phone conversations between him and SJG, and the written settlement agreement where he "agree[d] that you will pay the remaining balance noted above in full..." [ID at 7]. Due to this finding, and the finding that Miller's testimony was credible, Judge Calemno concluded that Tonkinson failed to provide documentation that supported his position, and adopted as a finding of fact Miller's testimony about Tonkinson's involvement with the account at the Old Residence and Tonkinson's status as customer of record. [ID at 7].

In analyzing the Petitioner's claim that he was not responsible for the subject charges, Judge Calemno considered two applicable regulations. (ID at 7-8). N.J.A.C. 14:3-1.1, entitled "Definitions," provides:

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

[ID at 7-8]. N.J.A.C. 14:3-7.1, entitled "Billing general provisions", provides that " (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." [ID at 7-8]. Judge Calemno determined that the evidence established that Tonkinson was identified in SJG's account records as responsible for payment of the bill, that Tonkinson's communications with SJG caused Tonkinson to be so identified, and that Tonkinson had accepted responsibility for payment of the balance remaining on the account for the Old Residence by signing the written settlement agreement. [ID at 8].

Relying upon N.J.A.C. 14:1-1.3 and Application of Saddle River, 71 N.J. 14, 29 (1976), Judge Calemno then looked to SJG's Tariff for Service, which Judge Calemno quoted in pertinent part:

2.5 LIQUIDATION OF PRIOR DEBTS: Service will not be supplied by the Company to former customers until such time as any and all indebtedness to the Company for previous service has been paid or otherwise discharged, or until such time as a reasonable deferred payment arrangement acceptable to the Company is established to liquidate such debt.

Judge Calemno then determined that SJG could discontinue service until all outstanding charges are satisfied consistent with the tariff and pursuant to N.J.A.C. 14:3-3A.9. [ID at 9].

Finally, Judge Calemmo determined that Tonkinson had failed to meet his burden of proof, that SJG had established that Tonkinson and Leonard were responsible for the balance due on the account for the Old Residence, that SJG properly denied Tonkinson's request for service at the New Residence until the debt was satisfied, and ordered dismissal of the petition. [ID at 9].

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

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." N.J.A.C. 14:3-1.1 defines "Customer of Record" as "the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. A customer may or may not be an end user, as defined herein."

Although Tonkinson was not the original applicant for utility service at the Old Residence, it is undisputed that he requested to be added to the account for the Old Residence and that he ultimately signed a settlement agreement wherein he explicitly agreed to "pay the remaining balance noted above in full..." (R-5). The written agreement reasonably caused SJG to identify Tonkinson as a "person responsible for payment of the public utility bill." Based upon the settlement agreement and other evidence in the record, Tonkinson is a "customer of record" and responsible for paying the bill pursuant to N.J.A.C. 14:3-1.1 and 7.1.

SJG also provided credible testimony, and it was undisputed, that the balance outstanding on the account for the Old Residence was overdue, which was in violation of the agreement. [1T.37:7-38:4]. The validity of Tonkinson's liability for the debt at the Old Residence was also the only basis upon which Tonkinson challenged SJG's refusal to provide service to the New Residence. Other than his general claim that he was not responsible for the debt, Tonkinson offered no evidence that SJG's refusal to provide service to the New Residence was improper. Pursuant to Section 2.5 of SJG's tariff, SJG was entitled to decline to provide service to Tonkinson, a former customer, at the New Residence until the prior debt was satisfied. Tonkinson offered no evidence to demonstrate that the restoration of service was appropriate pursuant to N.J.A.C. 14:3-3A.9 based upon payment of the debt. Accordingly, there is also no evidence to support a finding that service was improperly refused.

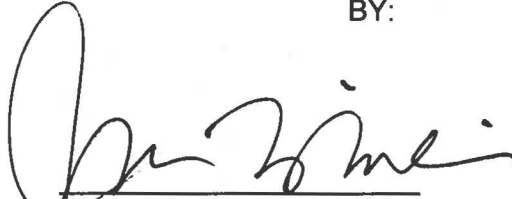
Thus, after careful review and consideration of the entire record, including Judge Calemmo's credibility findings, the Board **HEREBY FINDS** the findings and conclusions of Judge Calemmo to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear his burden of proof, by preponderance of the evidence, that he is not responsible for the balance due SJG or that he was improperly denied service at the New Residence due to the outstanding balance.

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

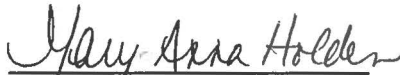
This order shall be effective October 13, 2021.

DATED: 10/6/21

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

JULES TONKINSON, PETITIONER

v.

SOUTH JERSEY GAS COMPANY, RESPONDENT

**DOCKET NO. GC20060466U
OAL Docket No. PUC-06930-20**

SERVICE LIST

Jules Tonkinson
Turnersville, NJ 08012

Van McPherson, III, Esq.
South Jersey Industries
1 North White Horse Pike
Hammonton, New Jersey 08037

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Julie Ford-Williams, Director
Division of Customer Assistance
Julie.Ford@bpu.nj.gov

Karriemah Graham
Supervising Administrative Analyst
Karriemah.graham@bpu.nj.gov

Terel Klein, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
25 Market Street
Post Office Box 112
Trenton, New Jersey 08625
terel.klein@law.njoag.gov

Brian Lipman, Esq., Acting Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
blipman@rpa.nj.gov



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 06930-20

AGENCY DKT. NO. GC20060466U

JULES TONKINSON,

Petitioner,

v.

SOUTH JERSEY GAS COMPANY,

Respondent.

Jules Tonkinson, petitioner pro se

Van L. McPherson, III, Assistant General Counsel, for respondent (South Jersey Gas Company)

Record Closed: July 7, 2021

Decided: July 26, 2021

BEFORE **KATHLEEN M. CALEMMO**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jules Tonkinson (Tonkinson), filed a billing dispute with the Board of Public Utilities (BPU) appealing the denial by respondent, South Jersey Gas Company (SJG), of his application for gas service at his new residence. Respondent denied the application because of a past due balance owed by Tonkinson at his former residence and maintained that the balance must be paid before service could be provided in his name.

PROCEDURAL HISTORY

Petitioner filed a petition with the BPU on or about June 18, 2020¹. SJG received the petition on July 22, 2020, and advised that it would be filing a motion to dismiss due to the matter having previously been resolved. On July 30, 2020, 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.

On November 18, 2020, SJG filed a motion for summary decision requesting that the matter be dismissed because it was previously resolved by a settlement agreement approved by the Honorable Jeffrey R. Wilson, ALJ, under OAL Docket No. BPU-06918-19. On December 15, 2020, petitioner, Jules Tonkinson (Tonkinson) filed an opposition to the motion disputing the nature of this proceeding as a billing dispute involving his former address of [REDACTED]. Tonkinson claimed that his appeal stemmed from SJG's refusal to provide service in his name at his new residence located at [REDACTED]. On January 28, 2021, at oral argument, I requested supplemental pleadings addressing the new issues contained in Tonkinson's opposition. Given the dispute as to the nature of this proceeding, I denied SJG's motion by Letter Order, dated April 5, 2021, and scheduled it for a hearing.

The hearing was held on July 2, 2021 via zoom platform by consent of the parties. The record was held open until July 7, 2021, to allow SJG to submit, without objection, the billing statement from the [REDACTED] address. (R-7.)

FACTUAL DISCUSSION AND FINDINGS

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

¹ The petition attached to the transmittal forwarded to SJG and the Office of Administrative Law was a copy of a request for a hearing, dated March 23, 2019, that had been the subject of a previous petition under OAL Docket No. BPU-06918-19, which was withdrawn due to a settlement agreement.

1. On June 8, 2020, Tonkinson contacted SJG to start service at [REDACTED], New Jersey [REDACTED]. SJG denied the request due to an outstanding balance at Tonkinson's former residence, [REDACTED], New Jersey [REDACTED] in the amount of \$2,225.85.
2. Tonkinson is married to Lisa Leonard. Before moving to [REDACTED], they resided at [REDACTED] and had gas service provided by SJG. There was a billing dispute regarding an outstanding balance at the [REDACTED] property.
3. On April 5, 2019, Tonkinson filed a request for a formal hearing to resolve the billing dispute regarding service to [REDACTED]. The BPU transmitted the matter to the OAL where it was assigned OAL Docket No. BPU-06918-19. On October 14, 2019, Tonkinson signed a letter acknowledging his acceptance of SJG's settlement offer resolving the matter. By email, dated October 22, 2019, to the Honorable Jeffrey R. Wilson, ALJ, Tonkinson withdrew his appeal stating that the matter had been resolved by a mutually agreeable settlement.
4. In accordance with the settlement agreement, SJG adjusted the account by a credit of \$276.66, leaving an outstanding balance of \$1,033.69. (R-7.) After the settlement agreement, no payments were made on the account. The current balance is \$2,277.93. Id.
5. The balance from [REDACTED] was still outstanding when Tonkinson requested service in his name at the new [REDACTED] address. SJG refused to provide service in Tonkinson's name at the new address until the outstanding balance from [REDACTED] was satisfied.

Testimony

Sarah Miller (Miller), is the Program Manager for SJG. She had previously been the Supervisor for Customer Service.

Miller explained that SJG maintains copies of all recorded telephone calls which are saved in its computer system for a three year period. SJG had access to computer notes from earlier recordings, including those from 2015, but could not produce the actual telephone recordings. Miller reviewed the account SJG maintained for Lisa Leonard. The computer notes reflected that on April 9, 2015, Tonkinson called SJG to discuss the account but the representative could not speak with him because he was not listed on the account. After receiving authorization from Lisa Leonard, Tonkinson was added to the account. (R-1.) The customer information for the [REDACTED] account noted that there were two persons listed on the account with Lisa Leonard as the main customer and Tonkinson listed as "Spouse." His social security number, telephone number, and email address were included with the customer information maintained by SJG. Miller testified that Tonkinson would have had to provide his personal identity information to be added to the account.

Miller stated that before a SJG representative can discuss an account, the caller must provide the last four digits of their social security number for identification and verification purposes. On May 4, 2015, the customer contact log showed that Tonkinson called SJG with questions about his billing statement. (R-1 at 3.) The inputted notes for May 5, 2015, showed that Tonkinson was an authorized representative, who had his own personal identification number. (R-1 at 4.)

Miller also produced a copy of the tax records for [REDACTED] to show that Tonkinson and Leonard owned the [REDACTED] property from 2015 through 2020 corresponding to the account statements for service. (R-2.)

Miller played a copy of a recorded telephone call from July 24, 2018, wherein Tonkinson told the SJG representative that he was on the account. (R-3.)

Miller also played a copy of a recorded telephone call from Tonkinson to SJG on March 26, 2018. Before the account representative could discuss the account, she confirmed that Tonkinson's name was on the account and she asked him to verify the security questions. Tonkinson provided the last four digits of his social security number and the representative confirmed the information he provided. The purpose of

Tonkinson's call was to discuss a discontinuation of service notice that he received for the [REDACTED] property. (R-4.)

Miller presented a copy of the settlement offer letter that SJG gave to Tonkinson bearing Tonkinson's signature of acceptance. (R-5.) As reflected in the letter, the settlement pertained to the account at [REDACTED] and it resolved the appeal that was pending under OAL Docket No. PUC-06918-19. Miller testified that a settlement agreement could only be signed by an account holder. As reflected in this agreement, Tonkinson agreed to pay the balance on the account in full.

When Tonkinson moved to [REDACTED]y, he requested gas service in his name. SJG denied his request because of the outstanding balance at his former residence, [REDACTED]. Miller stated that SJG's policy does not allow an existing customer to open a new account until all previous accounts are satisfied. The deed for [REDACTED] lists Lisa Leonard Tonkinson as the owner of the property but Tonkinson and their children lived there and Tonkinson wanted the gas service in his name. (R-6.)

On cross-examination, Miller confirmed there was no written documentation from Tonkinson prior to adding him to the account. There was confirming notes from Leonard giving SJG authority to add Tonkinson to the account in May 2015. Telephone recordings are not kept for longer than three years so the telephone call from 2015 was not retained. The computer notes also showed that all Tonkinson's personal identification numbers had been provided to SJG which established his consent to be added as a customer. Tonkinson maintained that none of the billing statements mailed to the residence for [REDACTED] were in his name. Miller replied that customer statements only contain one name as a general practice.

Tonkinson testified on his own behalf and disputed SJG's authority to deny him service at his new address for his wife's debt at [REDACTED]. He maintained that he was authorized to speak on Leonard's behalf about the account but he never agreed to be financially responsible for the bill. There was never anything in writing that would hold him responsible for the [REDACTED] account balance. Tonkinson acknowledged

that he went too far in negotiating a settlement on Leonard's behalf but did not believe that made him responsible for the debt. While he admitted that his signature appeared on the settlement agreement, he claimed he signed it on Leonard's behalf. He claimed that it was disturbing for SJG to hold him financially responsible on a verbal authorization.

On cross-examination, Tonkinson verified that his voice was on the recorded telephone calls with SJG. He admitted that he discussed the account and verified his social security number with SJG representatives. Although he admitted that he executed the settlement agreement with SJG, he now maintains that he lacked authority from Leonard to execute an agreement because he was not her power of attorney.

Tonkinson asked for service in his name at the [REDACTED] home where he resides with Leonard and their two children. He never agreed to be financially responsible for service at the [REDACTED] property. Tonkinson accused SJG of adding him to the account without his knowledge or permission. Tonkinson further argued that SJG is using a collection agency to recover this debt from Leonard not from him. (P-1.)

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. Tonkinson primarily testified in a calm manner; however, his testimony was inconsistent or incredible in significant ways.

First, it is undisputed that Tonkinson verbally acknowledged to SJG that he was an account holder. Second, he engaged in conversations with SJG where his personal identifying information was accepted without question. Finally, he freely negotiated and signed a settlement agreement on the [REDACTED] account with SJG that contained the following language:

By accepting this credit, you agree that this constitutes full and final settlement, satisfaction and release of all claims of any kind that you may have now or that you may acquire in the future, with respect to this matter. **You further agree that you will pay the remaining balance noted above in full** and that you will not seek any further discount or reduction in the balance due to SJG.

[emphasis added]

Tonkinson agreed in writing to pay the very balance that he presently claims is not his obligation. For that reason and the credible testimony of Miller, I **FIND** that Tonkinson presented no evidence to support his position that the outstanding balance was not his responsibility. I **FURTHER FIND** as **FACT** and adopt the information contained in Miller's testimony about Tonkinson's involvement with the [REDACTED] account and his status as a customer of record.

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 public utility bill. A customer may or may not be an end user, as defined herein.” N.J.A.C. 14:3-1.1.² SJG established that Tonkinson was identified in the account records as the person responsible for payment of the public utility bill. Tonkinson spoke to SJG representatives and identified himself as authorized to discuss the account and provided the verification that allowed SJG representatives to discuss the account with him. He maintained that his involvement was always meant to be limited to discussions on behalf of his wife. Tonkinson is seeking to be treated as Leonard’s power of attorney but presented no evidence of the existence of such an agency relationship. At all times pertinent to the settlement of the [REDACTED] dispute, Tonkinson held himself out to SJG as being authorized to negotiate in good faith and in his own name. Tonkinson signed the settlement agreement in his individual capacity agreeing to be personally responsible for the debt.

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. 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 addresses the provision of service when there is an outstanding balance:

2.5 LIQUIDATION OF PRIOR DEBTS: Service will not be supplied by the Company to former customers until such time as any and all indebtedness to the Company for previous service has been paid or otherwise discharged, or until such time as a reasonable deferred payment arrangement acceptable to the Company is established to liquidate such debt.

² "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.

<https://southjerseygas.com/SJG/media/pdf/pdf-regulatory/SJG-Tariff-No-13-July-2021.pdf>

Accordingly, pursuant to N.J.A.C. 14:3-3A.9, SJG may discontinue service until all outstanding charges are satisfied.

Petitioner contends he was opening a new account on [REDACTED] and had no responsibility for the outstanding charges attributed to the account for [REDACTED]. Petitioner has the burden of demonstrating by a preponderance of credible evidence that he did not owe an outstanding balance to respondent. I **CONCLUDE** petitioner has not met this burden. Petitioner's explanations concerning his intended limited involvement on behalf of his wife were insufficient to satisfy his burden in this matter. Petitioner provided sworn testimony that he went too far in executing the settlement agreement.

Despite not having the burden of proof, respondent took efforts to establish many facts of this case. Despite possessing a presumption of validity of its actions, respondent took care to demonstrate its analysis, which led to its reasonable belief that both Tonkinson and Leonard are responsible to SJG for the outstanding debt from the [REDACTED] residence.

Accordingly, I **CONCLUDE** that petitioner did not meet his burden of proof. Respondent properly denied petitioner's request for service in his name until satisfaction of the debt on the [REDACTED] account. Respondent determined that the outstanding gas service bill had not been 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.



July 26, 2021
DATE

KATHLEEN M. CALEMMO, ALJ

Date Received at Agency:

Date Mailed to Parties:

KMC/tat

APPENDIX

LIST OF WITNESSES

For petitioner:

Jules Tonkinson

For respondent:

Sarah Miller

LIST OF EXHIBITS

For petitioner:

P-1 Collection notice to Leonard

For respondent:

- R-1 Account screenshots
- R-2 Tax records – [REDACTED]
- R-3 Recorded telephone call, dated July 13, 2018
- R-4 Recorded telephone call, dated March 26, 2018
- R-5 Signed settlement agreement
- R-6 Tax records & deed for [REDACTED]
- R-7 Customer account for [REDACTED]

