



**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

NGOZI O. ANIGBOGU,  
Petitioner

V.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A  
ELIZABETHTOWN GAS COMPANY  
Respondent

) ORDER ADOPTING  
) INITIAL DECISION  
)  
)  
)  
) BPU DOCKET NO. GC10120917U  
) OAL DOCKET NO. PUC08391-11

Parties of Record:

**John Anigbogu**, Petitioner, appearing *pro se*  
**Deborah M. Franco, Esq.** (Cullen and Dykman), on behalf of Respondent, Pivotal Holdings, Inc

BY THE BOARD:

STATEMENT OF THE CASE

Mr. John Anigbogu<sup>1</sup> ("Petitioner") filed a petition with the New Jersey Board of Public Utilities ("Board") on December 8, 2010, contesting the \$2,134.38<sup>2</sup> gas bill he received from Elizabethtown Gas Company ("Respondent") following his September 20, 2010 payment of \$1,332.57 to Respondent. Petitioner contends that his September 20, 2010 payment covered his balance in full.

PROCEDURAL HISTORY

Petitioner filed a December 8, 2010 petition with the Board requesting a formal hearing related to a billing dispute with Respondent for gas service to his residence in Union Township, New Jersey. After the receipt and filing of Respondent's answer, the Board transmitted the matter to the Office of Administrative Law on July 14, 2011, as a contested case pursuant to N.J.S.A.

<sup>1</sup> Although the caption to this matter lists Ngozi Anigbogu as the Petitioner, the petition was filed by John Anigbogu, husband of Ngozi Anigbogu, and the Elizabethtown customer of record as defined by N.J.A.C. 14:3-1.1.

<sup>2</sup> Although the Initial Decision lists the outstanding balance as \$2,124.38, the Board relies on the amount of \$2,134.38 which is consistent with the testimony of Respondent's witness, Aurora Balbuena, and as illustrated in Exhibit R-1. (Tr. 12:7, 22).

52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Kimberly Moss. ALJ Moss scheduled a hearing for August 30, 2011 which was adjourned to November 3, 2011, at the request of the Petitioner. Following the November 3, 2011 hearing, ALJ Moss issued a November 23, 2011 Initial Decision dismissing the petition. Neither party filed exceptions.

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

After review and consideration of the entire record, the Board **HEREBY FINDS** that the findings and conclusions of ALJ Moss are reasonable and accordingly, **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be dismissed.

Petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). This petition raises the issue whether Petitioner is responsible for charges he incurred for gas usage from April 2009 through May 2010, when his meter was shut-off. For the following reasons, Petitioner is responsible for gas service he appropriated after his meter was shut-off and Respondent's refusal to reconnect his gas service was proper.

Respondent acknowledges receiving Petitioner's September 20, 2010 payment of \$1,332.57, which was credited to his outstanding balance for gas service through April 20, 2009. (Tr. 34:3-10).<sup>3</sup> However, the outstanding bill of \$2,134.38 comprises the balance due for Petitioner's gas usage after the April 20, 2009 meter shut-off and until May 17, 2010, when Respondent physically removed the meter.<sup>4</sup> Petitioner was not billed for that period of usage until December 3, 2010. (Tr. 34:8-9).

N.J.A.C. 14:3-7.1(a) provides that the customer of record shall be responsible for payment of all utility services 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. N.J.A.C. 14:3-1.1. Petitioner does not dispute that he is the customer of record. (Tr. 36:8-10).

Respondent produced two witnesses to testify about Petitioner receiving gas after the April 20, 2009 meter shut-off. Janet Patsiak ("Patsiak") is a field supervisor for Respondent with personal knowledge of the facts in this case. According to Patsiak, Respondent discovered at some point after the April 20, 2009 meter shut-off, that Petitioner's meter continued to advance. A crew was dispatched to examine the advancing meter and observed that the meter lock had been removed and the gas valve had been cut, allowing gas discharge into Petitioner's home. (Tr. 19: 10-14). Patsiak confirmed that the meter's continued advancement was evidence that the gas had been turned back on, but not by Respondent. (Tr. 19:10-14; 21:14-15) Although Respondent removed the meter on May 17, 2010 to prevent further tampering, the unlawful activity did not cease. (Tr. 24:3-4) Petitioner subsequently installed a flexible connector to allow the discharge of gas to the home in the absence of the meter. (Tr. 24:14-16). To prevent additional theft and potential harm to others as a result of Petitioner's activity, Respondent physically disconnected from the street, the gas main connected to Petitioner's home. (Tr. 24:7-9; 23:20-23).

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<sup>3</sup> Reference to the November 3, 2011 hearing transcript is referred to as "Tr." followed by the page and line number(s).

<sup>4</sup> Petitioner was not billed for any gas usage after the meter was removed. Tr. 31:11-13.

Petitioner does not refute Respondent's allegations concerning his receipt of non-metered gas, but argues instead that his \$1,332.57 payment in September 2010 satisfied the entire balance on his account which, as explained earlier, is simply not the case.

ALJ Moss made sound credibility determinations when she accepted the testimony of Respondent's witnesses, which supported her determination that Petitioner was responsible for paying for the gas that he unlawfully appropriated and that the petition should be dismissed as a matter of law. If a hearing has been held before an ALJ, neither an agency head nor a reviewing court should disturb the ALJ's credibility determinations, "made after due consideration of the witnesses' testimony and demeanor during the hearing." H.K. v. N.J. Dep't. of Human Servs., 184 N.J. 367, 384 (2005), citing, Clowes v. Terminix International, Inc., 109 N.J. 575, 587-58. In accordance with N.J.A.C. 14:3-7.1(a), Petitioner is responsible for the \$2,134.38 charge accruing from the April 20, 2009 through May 17, 2010 distribution of gas to his home as he failed to meet his burden to demonstrate otherwise.

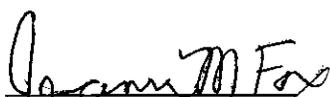
### DECISION

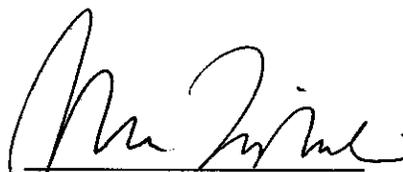
Upon careful review and consideration of the record, the Board HEREBY FINDS that the factual determinations and legal conclusions of the ALJ are reasonable and based upon sufficient, competent, and credible evidence. The Board HEREBY ADOPTS the Initial Decision in its entirety and HEREBY ORDERS Petitioners' complaint to be DISMISSED.

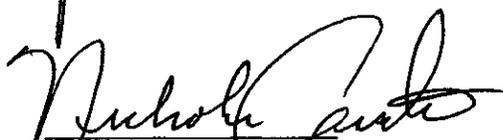
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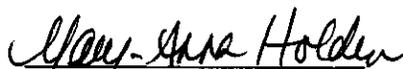
BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

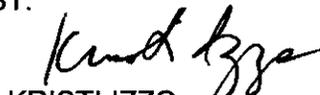
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

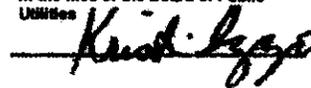
  
NICHOLAS ASSELTA  
COMMISSIONER

  
MARY-ANNA HOLDEN  
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



NGOZI O. ANIGBOGU

V.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A ELIZABETHTOWN GAS

BPU DOCKET NO. GC10120917U  
OAL DOCKET NO. PUC08391-11

SERVICE LIST

John Anigbogu  
2794 Audrey Terrace  
Union, New Jersey 07083

Deborah M. Franco, Esq.  
Cullen and Dykman  
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CASE MANAGEMENT  
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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.



State of New Jersey  
OFFICE OF ADMINISTRATIVE LAW

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INITIAL DECISION

OAL DKT. NO. PUC 08391-11

AGENCY DKT NO. GC10120917U

NGOZI O. ANIGBOGU,

Petitioner;

v.

PIVOTAL UTILITY HOLDINGS, INC., D/B/A/

ELIZABETHTOWN GAS,

Respondent.

*cmg*  
*E. Beslow*  
*C. Vachier*  
*JAG*  
*RPA*  
*V. Haynes*  
*D. Lee-Thomas*  
*J. Foul-Williams*  
*A. Lombardi*

John Anigbogu, pro se

Donna Franco, Esq., appearing on behalf of respondent (Cullen & Dykman,  
attorneys)

Record Closed: November 3, 2011

Decided: November 23, 2011

BEFORE KIMBERLY A. MOSS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner John Anigbogu (Anigbogu or petitioner), incorrectly listed in the petition as Ngozi O. Anigbogu, filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of Pivotal Utility Holdings Inc., D/B/A/ Elizabethtown

OAL DKT. NO. PUC 08391-11N

Gas (Elizabethtown) for gas service provided to 2794 Audrey Terrace, Union, New Jersey.

On July 14, 2011, this matter was transmitted to the Office of Administrative Law (OAL) for 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. A telephone prehearing was scheduled for August 17, 2011. Petitioner could not be reached for the prehearing. A hearing was scheduled for August 30, 2011. Petitioner requested an adjournment of that hearing, which was granted. The hearing was held on November 3, 2011, after which I closed the record.

### FACTUAL DISCUSSION AND FINDINGS

As the following is undisputed, I FIND it to be the FACTS of this case:

Anigbogu was a customer of Elizabethtown. The subject premises of this case is located at 2794 Audrey Terrace, Union, New Jersey. Gas service was discontinued to Anigbogu in April 2009 because of non-payment of the bill. He had an outstanding balance of \$1332.57. On June 1, 2010, Elizabethtown filed a police report in Union alleging theft and fraud because after it discontinued gas service at 2794 Audrey Terrace, their representative found the valve was cut, safety valves were missing and gas was being used. A representative of Elizabethtown found two additional instances of tampering. Anigbogu was arrested as a result of the tampering allegations. Anigbogu is in the pre-trial intervention program as a result of the tampering allegations. On September 21, 2010, Anigbogu paid Elizabethtown \$1332.57.

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### Testimony

#### John Anigbogu

Anigbogu stated that the meter was removed on August 4, 2010. He paid the outstanding balance of \$1332.57 in September 2009. Two months later he received a bill for \$1973.04. He believes that he was being billed for a period of time when there was no meter on the premises.

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Aurora Balbuena

Aurora Balbuena (Balbuena) works as a customer relations representative for Elizabethtown. She has worked on Angibogu's account. After Angibogu's service was discontinued in April 2009, the meter showed continued gas consumption even though it was locked. The charge for the consumption after the discontinuance was \$2124.38. This charge only includes gas consumption that was measured by the meter. All consumption after the discontinuance was unauthorized gas usage.

Janet Papciak

Janet Papciak (Papciak) is a field supervisor for Elizabethtown. It was discovered that after the meter was shut off at 2794 Audrey Terrace the meter was advancing. The meter advances only if gas is being consumed. There was consumption registered after the discontinuance. This is evidence of tampering. Upon investigation, it was revealed that the lock was removed, the valve was cut and the gas was turned back on. Elizabethtown did not turn the gas back on. On May 17, 2010, the meter was removed. Subsequent to the meter removal someone installed a flexible connector on two occasions that allowed gas to flow into the residence without being measured. Elizabethtown did not install the flexible connector.

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A distribution operating excavation crew was sent to sever the service pipe from the gas main in August 2010. The gas main runs down the street. The service pipe runs from the gas main to the dwelling.

The billing had stopped at the time of the discontinuance. Once it was determined that there was gas consumption after the discontinuance, a bill was sent for that consumption.

Having heard the testimony and witnesses I FIND the following additional  
**FACTS:**

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After Anigbogu's gas service was discontinued in April 2009, his gas meter continued to register usage. After the service was discontinued, the lock was removed from the meter and the valve was cut allowing gas into the premises. Removing the lock from the meter and cutting the valve constitutes tampering. The meter was removed from the premises on May 17, 2010. Gas was being consumed at 2794 Audrey Terrace due to the tampered meter for approximately one year and one month from the discontinuance of service in April 2009, until May 17, 2010, when the meter was removed. The charge for the unauthorized gas usage from April 2009 thru May 17, 2010, is \$2124.38. Subsequent to the removal of the meter a flexible connector was installed to furnish the premises with gas on two separate occasions. Elizabethtown did not install the flexible connector. As a result of the installation of the flexible connectors, Elizabethtown sent a distribution operating excavation crew to sever the service pipe from the main line. The charge of \$2124.38 only includes consumption that was measured by the meter.

#### LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:3-3A.1(a)(3) provides a basis for discontinuation of service "for nonpayment of a valid bill due for service furnished at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2." In April 2009, Anigbogu's service was discontinued. At that time had an outstanding balance with Elizabethtown of \$1332.57. I CONCLUDE Anigbogu's service was discontinued in April 2009 for nonpayment of a valid bill.

N.J.A.C. 14:3-7.1(a), billing general provisions, provides:

The customer of record, as defined at N.J.A.C. 14:3-1.1, shall be responsible for payment for all utility service rendered.

I CONCLUDE there was gas consumption after the service was discontinued. This was due to tampering. On three occasions a representative from Elizabethtown came to the premises and saw that there was tampering. Although the service was

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discontinued in April 2009, petitioner continued to receive gas due to tampering until the service pipe was severed from the main line.

**ORDER**

It is therefore **ORDERED** that the petition in this matter is **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, 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.

11-23-11  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

NOV. 23, 2011

Date Mailed to Parties: NOV. 25, 2011

  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

ljb

OAL DKT. NO. PUC 08391-11N

**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

Aurora Balbuena

Janet Papciak

**EXHIBITS**

**For Petitioner:**

None

**For Respondent:**

- R-1 Gas Consumption and Billing for Anigbogu from February 2008 thru December 2010
  - R-2 Photos of the Exterior of 2794 Audrey Terrace, Union, N.J.
  - R-3 Police Report of the Township of Union dated June 1, 2010
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