STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: July 1, 2014]

GREGORY STEVENS, d/b/a F. SAIA RESTAURANTS, LLC	:	
	:	**C.A. No. PC 12-6305**
v.	:	
NATIONAL GRID	:	

DECISION

VOGEL, J. Gregory Stevens (Stevens) brings this appeal from a decision of the Rhode Island Division of Public Utilities and Carriers (Division).[1] The Division ordered him to pay National Grid $18,029.95 for unbilled electric service to his restaurant. This Court derives its jurisdiction from G.L. 1956 § 39-5-1. For the reasons set forth below, this Court upholds the decision of the Division of Public Utilities and Carriers.

I

Facts and Travel

On May 1, 2012, Stevens submitted a complaint to the Division, challenging a bill he had received from National Grid in the amount of $18,029.95. (Ex. 15, Stevens' complaint.)[2] The disputed bill relates to service allegedly provided by the electric company to Stevens'

[1] The Division's Advocacy Section, though not a party in this case, also submitted a post-hearing memorandum with a recommendation regarding the case. The Advocacy Section is a group within the Division and provides the Division with legal recommendations regarding the outcome of administrative cases. See § 39-1-19 ("When requested by the administrator, the attorney general or an assistant designated by him or her shall appear and represent the division in any hearing, investigation, action, or proceeding under this title or in reference to any act or proceeding of the division, and intervene in any action or proceeding in which is involved any question arising under this title").

[2] Exhibit 15 is an undated letter from Stevens that is not addressed to any specific person or organization. However, it appears that the Division accepted the letter as Stevens' complaint.

commercial property located at 1200 Hartford Avenue, unit four, Johnston, Rhode Island. (Ex 2, Division's Interoffice Memorandum; Ex. 15, Stevens' complaint.) The Division conducted a hearing on Stevens' complaint on September 20, 2012. (Ex. 4, Report and Order at 1-2; Ex. 18, Hr'g Tr., Sept. 20, 2012.)[3] At the hearing, National Grid presented two witnesses in support of its claim that the bill was accurate: Kevin Allsworth (Allsworth), an analyst at National Grid's Regulatory and Escalated Complaint Program, and Sean McGovern (McGovern), a supervisor at National Grid's Customer Metering Services Group. (Tr. at 8, 51-52.)

According to Allsworth, the issue arose from a complaint National Grid received on September 26, 2011 from Stevens' landlord, Kenneth Lantini (Lantini). (Tr. at 9.) Lantini claimed that he had been billed improperly for service provided to unit four, and that this mistake had continued for fourteen years, from February 5, 1997 to October 25, 2011. (Tr. at 9; Ex. 8, Letter from Lantini to National Grid, Nov. 8, 2011.) Lantini also sent National Grid a letter explaining the meter mix-up and pertinent lease documents. (Tr. at 10; Ex. 8, Letter from Lantini to National Grid, Nov. 8, 2011 and Lease Records.) According to the leases, on January 1, 2005, Lantini rented four units, including unit four, to a single tenant, Pat's Italian Food to Go, Inc. (Pat's). (Ex. 8, Lease Records.) On July 1, 2007, Pat's assigned its interest in the rental property to Stevens. Id.

Allsworth presented detailed records showing account information for the four units while they were occupied either by Pat's (between 2004 and 2007) or Stevens (from July 2007). (Ex. 11, National Grid's records showing account details for units one through four.) According to Allsworth, these records demonstrate that National Grid always correctly billed Pat's, and later Stevens, for electric service to units one, two, and three. (Tr. at 22-24.)

[3] Hereinafter, Ex. 18 will be referred to as Tr.

As for unit four, National Grid conducted a loop check on October 20, 2011, after receiving Lantini's complaint, to test the meters at the various units to determine whether the meters were functioning properly.[4] (Tr. at 9-10, 12; Ex. 9, Loop Check records.) Thereafter, National Grid performed a second loop check on November 14, 2011. (Tr. at 11-12; Ex. 9, Loop Check records.) According to Allsworth, the loop checks confirmed Lantini's claim that he had been incorrectly billed for electric service to unit four. (Tr. at 14.)

The situation became complicated by the presence of a fourth meter that had recorded electric usage for a "mystery unit" that was billed to Pat's and then to Stevens.[5] Id. at 31. It is undisputed that National Grid billed Pat's, and later Stevens, for services recorded under a total of four meters, including three that relate to units one, two, and three and one that Allsworth could not attribute to Stevens' rental property. Id. at 14, 22-23; Ex. 9, Loop Check logs. In fact, National Grid has been unable to locate the property that corresponds to this fourth meter.[6] (Tr. at 43, 46.)

Records offered at the hearing reveal that the electric consumption attributed to the "mystery unit" between 2007 and 2010 was considerably less than the consumption National Grid now claims relates to Stevens' unit four. (Ex. 14, Bill Analysis.) The consumption recorded by the meter attributed to the "mystery unit" ranged between about 6000 and 10,000 kilowatt hours (kWh) between 2008 and 2010. (Ex. 12, meter readings for the "mystery unit";

[4] During a loop check, a meter technician physically checks a meter on a client's property to ensure that the meter is attributing the electric usage to the correct unit. (Tr. at 11.)

[5] In its decision, the Division refers to the unidentified unit that consumed the electricity recorded by the fourth meter as the "mystery unit." (Ex. 4, Report and Order at 12.)

[6] The meter that had been recording consumption to the fourth, "mystery unit" (not unit four) was meter no. 95842985. (Tr. at 31.) This meter was installed on March 4, 2004 until November 5, 2011, at which point National Grid replaced it with meter no. 04492007. Id; Ex. 12, meter reading history for "mystery unit." National Grid then removed this meter at a later, unknown date, and currently, no meter serves this "mystery unit." (Tr. at 31-32, 42-43.)

Ex. 14, Bill Analysis.) However, the consumption recorded by the meter that actually recorded consumption for unit four ranged between approximately 36,000 and 46,000 kWh between 2008 and 2010.[7] (Ex. 13, meter readings for unit four; Ex. 14, Bill Analysis.)

As a result of this mix-up, National Grid calculated the amount due by taking the difference between the amount already charged to Stevens using the readings from the meter recording consumption for the "mystery unit" and the amount that would have been charged to unit four.[8] (Tr. at 37; Ex. 14, Bill Analysis.) When calculating the amount due, Allsworth stated that National Grid used the rates in effect during the period in dispute. (Tr. at 37.) Allsworth also explained that National Grid used the readings from meter 97244358 as the basis for calculating the amount Stevens owed to National Grid. Id. at 39-40. He acknowledged that that meter 97244358, which had been recording consumption between February 5, 1997 and March 4, 2011, had not been tested for accuracy because National Grid replaced that meter before the error was detected. Id. at 34, 39-41. National Grid then installed meter 46073991, which recorded electricity consumption to unit four from March 4, 2011 until February 15, 2012. Id. at 34. When meter 46073991 was removed in February of 2012, National Grid did perform a test and determined that that meter was operating within prescribed parameters. Id.

[7] For the year 2007, the Bill Analysis documents only reflect data recorded between November 3, 2007 and January 2, 2008. (Ex. 14, Bill Analysis.) However, even that limited data shows that the consumption recorded for the "mystery unit"—955 kWh—and the actual unit four—3383 kWh—differed significantly. See id. Similarly, for the year 2011, the Bill Analysis documents show that between January 28, 2011 and October 26, 2011, electrical consumption for unit four—14,194 kWh—exceeded the electrical consumption for the "mystery unit"—12,310 kWh. See id.

[8] The Bill Analysis documents submitted into evidence at the hearing show that National Grid charged Stevens an additional $374.27 for 2007, $6221.02 for 2008, $6817.71 in 2009, $4348.66 for 2010, and $268.29 for 2011. (Ex. 14, Bill Analysis.) These amounts equal $18,029.95, the amount in dispute.

Relying on its calculations, National Grid determined the overcharge to total $28,269.18, and the company's Accounts Processing Department adjusted Lantini's account in that amount. Id. at 14. National Grid then billed Stevens for the amount credited to Lantini. Id.; Ex. 10, Letter from National Grid to Stevens, Nov. 21, 2011.

Later, National Grid determined that it had billed Stevens for amounts that covered the years when Pat's occupied the property and reduced his bill by $10,239.23, which led to the disputed charge of $18,029.95. (Tr. at 15, 18-19; Ex. 10, Letters from National Grid to Stevens, Dec. 5, 2011 and Apr. 13, 2012). National Grid then wrote off $10,239.23 as uncollectible because Pat's, the previous customer, did not have current, active accounts. (Tr. at 21.)

Following Mr. Allsworth's testimony, National Grid then presented its next witness, Mr. McGovern. Id. at 51. McGovern testified that he made a field visit on August 22, 2012 and reviewed the loop check test that was performed on November 14, 2011. Id. at 53. He confirmed that all of the meters that were examined during the loop check tests were still in use. Id. at 53-54.

After National Grid completed presenting its case, Stevens stated that he "would rest based on the testimony that's already been elicited." Id. at 56. However, Stevens did submit three exhibits which were accepted into evidence. First, he offered the letter he had submitted to the Division, disputing the charges assessed against him by National Grid and which the Division apparently accepted as his complaint. (Ex. 15, Stevens' complaint.) Next, he presented a package of materials he had provided to National Grid after he filed his complaint with the Division. (Ex. 16, Meter readings for units one through four and the "mystery unit.") That package of documents included meter readings which formed the basis of previous billings. Id. Finally, Stevens offered handwritten drawings intended to illustrate both the location of each

appliance and the corresponding kWh consumption for each unit from 2007 to 2012.[9] (Appeal Ex. 3, drawings of units one through four, Apr. 23, 2014.)

As set forth in the handwritten drawings, appliances located in unit four included a beer and wine cooler, one single door refrigerator, a freezer chest, a double door freezer, a ten foot walk-in refrigerator, an air conditioning unit, and eight recessed lights with dimmers.[10] Id. They also listed the kWh for unit four at 7779 kWh in 2008, 6599 kWh in 2009, 9914 kWh in 2010, and 16,905 kWh in 2011.[11] Id.

Those drawings also depicted the electrical appliances located in units one, two, and three. Id. Of significance to the issue in question, the number of appliances located in unit two most closely matched those in unit four. The appliances in unit two included an air conditioning unit, a commercial dishwasher, two single door refrigerators, two salad units, a convection oven, eight light fixtures, an industrial fan hood system, a make-up air fan, and an industrial fan. Id. The pertinent meter readings for unit two were similar to those readings for the same time period for the meter that National Grid claims recorded electrical consumption for unit four. See Ex. 13, meter readings for unit four; Ex. 14, Bill Analysis; Ex. 16, meter readings for units one through four and "mystery unit." According to the records presented by Stevens, the meter for

[9] The record transmitted to the Court did not contain these drawings. On April 23, 2014, the parties appeared in court and acknowledged that the exhibit should have been included with the record on appeal. To correct the error arising out of the oversight or omission, the Court accepted the drawings as Exhibit 3. Hereinafter, this exhibit will be referred to as "Appeal Ex. 3, Drawings of units one through four, Apr. 23, 2014."

[10] In his memorandum in support of his appeal to this Court, Stevens contends that the drawings were prepared with the assistance of an experienced electrician. Such contention, however, is not included in the record on appeal nor was application made to or granted by the Court for leave to present additional evidence. Accordingly, the Court gives this contention no weight. See G.L. 1956 § 42-35-15(e).

[11] For the years 2007 and 2012, the drawings only include usage for the several months pertinent to the dispute.

unit two recorded usage at 97,292 kWh in 2008; 86,007 kWh in 2009; 87,617 kWh in 2010; and 74,927 kWh in 2011. (Ex. 16, meter readings for units one through four and "mystery unit.")

After examining the evidence on the record, the Division accepted National Grid's position and found that Stevens owed the electric company $18,029.95. (Ex. 4, Report and Order at 12, 14.) The Division first noted that the lease documents and loop check tests performed on October 20 and November 14, 2011 showed that unit four had been occupied by Stevens since July 2007. Id. at 12. Stevens had contended that the Division should not rely on readings provided by the subject meter because National Grid had failed to test it for accuracy. The Division rejected this argument and found that the absence of testing in and of itself did not provide a sufficient basis for concluding that the meter was not operating within the Division's proscribed accuracy standards. Id. The Division compared the number of appliances in unit two and its billing history with the number of appliances in unit four and its billing history and concluded that the account history for unit four was consistent with the equipment that was operating inside that unit. Id. In its decision, the Division also noted that the kWh consumption recorded by the meter connected to the so-called "mystery unit" was significantly less than the kWh usage recorded by the meter connected to unit four. Id. at 13.

The Division dismissed Stevens' assertion that National Grid committed error by letting Pat's "off the hook" as "baseless" and found that National Grid's four year repayment plan offer to Stevens was reasonable and appropriate. (Ex. 4, Report and Order at 13.) The Division dismissed Stevens' complaint and held Stevens responsible for the $18,029.95. Id. at 14.

In its decision, the Division also expressed displeasure that National Grid lost several years of revenue for consumption recorded by the meter connected to an unidentified unit, the so-called "mystery unit." The Division directed National Grid to coordinate with the landlord to

conduct loop checks for the empty meter sockets serving the "mystery unit" to establish their concomitant unit locations. Id. If current or former tenants with active electric accounts could be identified, the Division directed National Grid to bill those customers. Id. at 13-14.

Having lost his challenge to the $18,029.95 charge, Stevens took a timely appeal to this Court. (Stevens v. Nat'l Grid, appeal docketed, PC-2012-6305, Dec. 10, 2012.)

II

Standard of Review

Rhode Island General Laws § 42-35-15(g) governs the Superior Court's review of an administrative agency decision. This section states:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

As a general rule, "administrative agencies retain broad enforcement discretion and, as always, considerable deference is accorded to such agencies about how to enforce regulations." Arnold v. Lebel, 941 A.2d 813, 820-21 (R.I. 2007); see Auto Body Ass'n of R.I. v. State Dep't of Bus. Regulation, 996 A.2d 91, 97 (R.I. 2010). An agency's interpretation of its own enabling statute or regulations should be accorded "'weight and deference as long as that construction is not clearly erroneous or unauthorized.'" In re Lallo, 768 A.2d 921, 926 (R.I. 2001) (quoting

Gallison v. Bristol Sch. Comm., 493 A.2d 164, 166 (R.I. 1985)). Even if other reasonable constructions of the statute are possible, this Court must afford deference to the agency's interpretation. Labor Ready Northeast, Inc. v. McConaghy, 849 A.2d 340, 345 (R.I. 2004).

The reviewing court is limited to examining the record to determine whether the agency's decision is supported by legally competent evidence. See Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (citing Johnson Ambulatory Surgical Assocs. v. Nolan, 755 A.2d 799, 804-05 (R.I. 2000)). Legally competent evidence is such "relevant evidence that a reasonable mind might accept as adequate to support a conclusion [and] means an amount more than a scintilla but less than a preponderance." Id.

The court may not "substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." Auto Body Ass'n of R.I., 996 A.2d at 95 (quoting § 42-35-15(g)). Rather, the court must give deference to an administrative agency's factual findings. Reilly Elec. Contractors, Inc. v. State Dep't of Labor & Training ex rel. Orefice, 46 A.3d 840, 844 (R.I. 2012). "[An agency's] findings enjoy a presumption of reasonableness until shown to be clearly, palpably, and grossly unreasonable by clear and convincing evidence." Block Island Power Co. v. Pub. Utils. Comm'n, 505 A.2d 652, 653-54 (R.I. 1986) (citing New Eng. Tel. & Tel. Co. v. Pub. Utils. Comm'n, 116 R.I. 356, 377, 358 A.2d 1, 15 (1976)). Thus, an administrative decision will be reversed only if it is clearly erroneous in view of the reliable, probative and substantial evidence contained in the record. Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988). If there is competent evidentiary support for the agency's determination, the determination cannot be disturbed. See Bunch v. Bd. of Review, R.I. Dep't of Emp't & Training, 690 A.2d 335, 337 (R.I. 1997).

Moreover, agencies are presumed to have specialized knowledge in their respective fields, and they have wide discretion to determine the weight given to any evidence. Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 448 (R.I. 2010) (asserting that administrative agencies possess unique expertise); Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 203 (R.I. 1993) (stating that "[t]he weight to be given to any evidence rests with the sound discretion of the hearing officer"); Stein, Administrative Law § 28.03 (2012) (explaining that "most agencies are presumed to have knowledge and expertise in their respective fields"). Courts have stated that agency decisions should be given "considerable deference when that decision involves a technical question within the field of the agency's expertise." R.I. Higher Educ. Assistance Auth. v. U.S. Dep't of Educ., 929 F.2d 844, 857 (1st Cir. 1991); Constance v. Sec'y of Health & Human Servs., 672 F.2d 990, 995-96 (1st Cir. 1982).

III

Analysis

A

Contentions of the Parties

On appeal, Stevens first argues that the Division erred in rejecting his contention that he did not consume the electricity reflected on the disputed bill for unit four. In support of this argument, he points to the drawings he offered at the hearing, which he suggests demonstrate that it would be impossible to attribute the disputed electric usage to unit four, given the amount of appliances located in that unit. See Appeal Ex. 3, drawings of units 1-4, Apr. 23, 2014. He also points to a graph on the Division's post-hearing memorandum and Ex. 13, unit four's meter readings that allegedly show that unit four consumed significantly less than 45,000 kWh. Stevens argues that a graph contained in the Advocacy Sections' post-hearing memorandum,

along with the meter readings, prove that unit four consumed significantly less than the total kWh reflected on the disputed bills. (Appellant's Br. at 4; Ex. 5, Advocacy Section's Post-hearing memorandum at 5; Ex. 12, meter readings for the "mystery unit"; Ex. 13, meter readings for unit four.)

In response, National Grid contends that this Court should uphold the Division's decision because it was based on competent evidence. Specifically, it asserts that there is no evidence on the record to contradict the loop check results or the rebilling calculations performed by National Grid. National Grid also maintains that it met its burden in showing that the electricity furnished to unit four for the subject billing period was, in fact, consumed by Stevens.

The Advocacy Section also submitted a brief on appeal in support of the decision of the Division. Counsel for the Advocacy Section joins National Grid in arguing that the evidence on the record supports the Division's findings and notes that Stevens did not dispute the accuracy of any of the evidence that National Grid presented at the hearing. Specifically, the Advocacy Section contends that there is no evidence to show that the meters connected to unit four were not operating within the Division's prescribed accuracy standards, that National Grid is under no regulatory obligation to test retired meters, and that National Grid's records do not reflect accuracy complaints connected to the meters.

B

The Division's Decision

The Court finds that the Division's decision is supported by substantial and competent evidence on the record. See Johnson Ambulatory Surgical Assocs., 755 A.2d at 804-05. The record reveals that Stevens leased unit four from July 1, 2007 to the present. (Ex. 8, Assignment of Lease Agreement.) The meter usage records for unit four show that between 2008 and 2010,

the electricity consumption ranged, on average, between 36,000 and 46,000 kWh per year. (Ex. 13, unit four meter readings.) Allsworth testified that National Grid conducted two loop checks that confirmed that Stevens, not his landlord, should have been billed for unit four and that the amount billed was accurate. (Ex. 9, Loop Check records; Tr. at 9-12.) Stevens did not contest the accuracy of these records at the hearing nor did he present any evidence that discredited Allsworth's testimony. The Division found that the drawings submitted by Stevens supported the billing charge. See Bunch, 690 A.2d at 337; Ex. 4, Report and Order at 12. Those drawings depict numerous electrical appliances, arguably similar in number to those located in unit two. See Appeal Ex. 3, drawings of units one through four, Apr. 23, 2014. The meter readings relating to unit two over the subject time period are comparable to the meter readings for unit four as reflected on the disputed bill. See Ex. 13, meter readings for unit four; Ex. 16, meter readings for units one through four and "mystery unit." As the Division stated: "[T]he consumption data coming from [u]nit 4's account history, compared to the consumption data coming from [u]nit 2's account history, appears consistent with the restaurant equipment that was operating inside that unit." (Ex. 4, Report and Order at 12.) The Court finds that this comparison between unit two and unit four was a reasonable one and was supported by reasonably competent evidence. See Johnson Ambulatory Surgical Assocs., 755 A.2d at 804-05; Ex. 4, Report and Order at 12.

Stevens relies on the readings attributable to the so-called "mystery unit" as reflecting his actual electric consumption for unit four. Stevens notes that the electric usage for the "mystery unit" was far less than the consumption recorded by the meter National Grid now attributes to unit four. The Division dismissed this contention and found that those readings did not record his electric usage. (Ex. 4, Report and Order at 12-13.) As such, the Division did not consider

that meter relevant to the disputed charges. Id. at 13. In this regard, the Division's determination was supported by competent evidence presented by Stevens himself, to wit, the drawings depicting the comparable number of appliances located in units two and four. See Town of Burrillville, 921 A.2d at 118; Appeal Ex. 3, drawings of units one through four, Apr. 23, 2014. Moreover, the Division's conclusion is not in contravention of its governing statute that requires National Grid to bill its customers for all of the electricity they consume, as well as its own regulations that require rebilling for improperly calculated electric usage based on previously recorded data or other pertinent information known to the public utility. See Auto Body Ass'n of R.I., 996 A.2d at 97 (explaining that "'deference will be accorded to an administrative agency when it interprets a statute whose administration and enforcement have been entrusted to the agency . . . .'" (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)). Specifically, § 39-2-2(a) prohibits public utility companies from "charg[ing], demand[ing], collect[ing], or receiv[ing] from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it in, or affecting, or relating to . . . the distribution of electricity . . . than that prescribed in the published schedules or tariffs then in force or established as provided herein . . . ." Section 39-2-3(a) also prohibits public utilities from "mak[ing] or giv[ing] any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or [subjecting] any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever . . . ." Finally, the Division's own regulations state that "[i]f a meter is found which does not register, the bill for the period of non-registration shall be based upon information recorded prior or subsequent to the period of non-registration and by any other pertinent information supplied by the customer or known to the public utility." Division Rules Prescribing

Standards for Electric Utilities § VIII(D)(c) (2004) (available at http://www.ripuc.org/rulesregs/divrules.html). Thus, the Division's decision is not clearly erroneous. See Auto Body Ass'n of R.I., 996 A.2d at 97; In re Lallo, 768 A.2d at 926.

The record also demonstrates that during the pertinent time frame, the meter that National Grid claims recorded electric consumption for unit four was retired and replaced. (Tr. at 39-40.) It is undisputed that this meter recorded usage during most of the challenged billing period and was not tested for accuracy when it was removed. Id. Stevens contends that this failure supports his contention that he should not be charged for the consumption it recorded. The Division disagreed, noting that there was no obligation on the part of National Grid to perform such a test on a retired meter, nor was there any competent evidence suggesting that it was not operating within the Division's prescribed accuracy standards. (Ex. 4, Report and Order at 12.) This Court defers to the Division's conclusion on this issue. See Champlin's Realty Assocs., 989 A.2d at 448 (stating the administrative agencies have unique expertise); Envtl. Scientific Corp., 621 A.2d at 203 (asserting that administrative agencies have discretion to determine the weight to be given to evidence). For these reasons, this Court holds that the Division's decision was not clearly erroneous in view of the reliable, probative, and substantial evidence contained in the record. See Town of Burrillville, 921 A.2d at 118. Thus, the Division's decision ordering Stevens to pay $18,029.95 in electric billing expenses to National Grid was supported by legally competent evidence. See id.

C

Equitable Relief

In his brief to this Court, Stevens quotes from the post-hearing memorandum submitted by the Advocacy Section, relating to the availability of equitable relief to a customer who

reasonably relied on a billing mistake made by the utility to his or her detriment. The Advocacy Section recommended against applying this doctrine to the subject case, noting that Stevens should have known that he was under billed in light of the relatively small bills he received for unit four compared to the bills he received for unit two when both units had comparable appliances. The Division never addressed the doctrine of equitable relief it in its decision.

The doctrine of equitable relief appears under §§ 39-3-13.1 and 39-4-10. Section 39-4-10 states:

> "If, upon a hearing and investigation had under the provisions of this chapter, the division of public utilities and carriers shall find that any regulation, measurement, practice, act, or service or any public utility is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of any of the provisions of chapters 1 - 5 of this title, or that any service of any such public utility is inadequate or that any service which can be reasonably demanded cannot be obtained, the division shall have power to substitute therefor such other regulations, measurements, practices, service, or acts, and to make such order respecting, and such changes in the regulations, measurements, practices, service, or acts, as shall be just and reasonable, and the power to order refunds as provided for in § 39-3-13.1."

Section 39-3-13.1 allows the Division, "when deemed by it necessary, to provide remedial relief from unjust, unreasonable, or discriminatory acts, or from any matter, act, or thing done by a public utility which [is] . . . prohibited or declared to be unlawful . . . ."

As an initial matter, the "raise or waive" rule "precludes [an appellate court's] consideration of an issue that has not been raised and articulated at trial." Town of Barrington v. Williams, 972 A.2d 603, 609 (R.I. 2009) (quoting State v. Bido, 941 A.2d 822, 828 (R.I. 2008)); see Harvard Pilgrim Health Care of New England v. Thompson, 318 F. Supp. 2d 1, 8 (D.R.I. 2004) ("It is inappropriate for courts reviewing appeals of agency decisions to consider arguments not raised before the administrative agency."). "It is well settled that a litigant cannot

raise an objection or advance a new theory on appeal if it was not raised [below]." Id. (citing Hydro–Manufacturing, Inc. v. Kayser–Roth Corp., 640 A.2d 950, 959 (R.I. 1994)); see also DiPrete v. Morsilli, 635 A.2d 1155, 1160 (R.I. 1994) (explaining that courts will "review only questions of law that appear in the record"). "This rule preserves 'judicial economy, agency autonomy, and accuracy of result' by requiring full development of issues in the administrative setting to obtain judicial review." N. Wind, Inc. v. Daley, 200 F.3d 13, 18 (1st Cir. 1999) (quoting Eagle Eye Fishing Corp. v. U.S. Dep't of Commerce, 20 F.3d 503, 505 (1st Cir. 1994)). Thus, a party who fails to assert an argument at an administrative hearing is deemed to have waived his or her rights on appeal. See Harvard Pilgrim Health Care of New Eng., 318 F. Supp. 2d at 8.

Here, Stevens did not raise this issue before the Division, nor was it addressed other than in the post-hearing memorandum of the Advocacy Section. By failing to raise the issue, Stevens did not present any evidence of detrimental reliance and prejudice suffered by him as a result of the billing error. The Court cannot conclude that he relied on the mistake to his detriment absent evidence of the nature and extent of the injury or loss he endured as a result of such reliance.

The only reference to that remedy was contained in the post-hearing memorandum of the Advocacy Section. The Division could not assume detrimental reliance without receiving any evidence on the issue. Also, the Division had no obligation to raise and consider issues sua sponte. See generally Allen v. Zoning Bd. of Review of Warwick, 75 R.I. 321, 324, 66 A.2d 369, 370 (1949) (explaining that an administrative body cannot pass judgment on matters not before it). Thus, this Court will not consider Stevens' equitable relief argument that it deems waived. See Harvard Pilgrim Health Care of New Eng., 318 F. Supp. 2d at 8.

Even if Stevens had not waived this argument, equitable relief is a discretionary matter left to the Division. See §§ 39-3-13.1; 39-4-10; Arnold, 941 A.2d at 820-21. This Court will not "probe the mind" of an administrative official to determine its reasons for declining to impose an equitable remedy. See United States v. Morgan, 313 U.S. 409, 422 (1941) ("'[I]t [is] not the function of the court to probe the mental processes of the [administrative decision maker].'") (quoting Morgan v. United States, 304 U.S. 1, 18 (1938)). As one court stated, "[w]ere the court free to delve into the merits of issues not presented to the agency, it would effectively usurp the agency's function." Mazariegos-Paiz v. Holder, 734 F.3d 57, 62 (1st Cir. 2013). Although the "choice of remedies is open to a limited [judicial] review . . . such judicial review extends no further than to ascertain whether the agency exercised an allowable discretion or an allowable judgment in its choice of the remedy." 2 Am. Jur. 2d Administrative Law § 453 (2004) (citing F.T.C. v. Mandel Bros., Inc., 359 U.S. 385 (1959); Fed. Trade Comm'n v. Nat'l Lead Co., 352 U.S. 419 (1957); Nathanson v. N. L. R. B., 344 U.S. 25 (1952); N.L.R.B. v. Gullett Gin Co., 340 U.S. 361 (1951); Jacob Siegel Co. v. Fed. Trade Comm'n, 327 U.S. 608 (1946)). Thus, a reviewing court must afford the agency's judgment deference unless the remedy is so "unconscionably disproportionate to the offense that it amounts to an abuse of discretion." See id. Furthermore, although the Superior Court is a court of equity, "the trial justice [is] not vested with any authority to circumvent the clear procedural limitations that the statutory and decisional law of this state placed upon him." Nickerson v. Reitsma, 853 A.2d 1202, 1206 (R.I. 2004) (finding that the trial justice "exceeded his authority in vacating the administrative penalty based upon what he characterized as 'the principle of finality' and his obligation 'to do substantial justice between the parties'"). Thus, it is reversible error for a trial justice to impose a remedy

not considered by the hearing officer when the administrative decision is supported by competent evidence. See id.

Here, § 39-4-10 gives the Division the power to order refunds if it finds that a public utility acted unjustly, unreasonably, or discriminatorily. Section 39-3-13.1 further states: "The division shall have the power, *when deemed by it necessary*, to provide remedial relief from unjust, unreasonable, or discriminatory acts." (emphasis added). According to the Report and Order, the Division found adequate evidence on the record to support the charge of $18,029.95 and that the amount billed to Stevens was "significantly less" than the usage reported by the meters. See Ex. 4, Report and Order at 1, 12-13. The Division found insufficient evidence on the record to suggest that the meters connected to unit four were not operating accurately or that National Grid acted unreasonably, unjustly, or preferentially. Id. at 13; see Labor Ready Northeast, Inc., 849 A.2d at 345. The Division also found that National Grid's four-year repayment plan was "reasonable and appropriate in this case," and this Court will not disturb the Division's determination. See Bunch, 690 A.2d at 337; Ex. 4, Report and Order at 13. Having concluded that the administrative decision was supported by competent evidence, this Court will not impose an equitable remedy not considered by the hearing officer.[12] See Nickerson, 853 A.2d at 1206.

Stevens' reliance on Providence Water Supply Board of Providence, Rhode Island v. Division of Public Utilities and Carriers of Rhode Island, a Superior Court case, is not persuasive to this Court. See Impulse Packaging, Inc. v. Sicajan, 869 A.2d 593, 600 n.14 (R.I. 2005)

[12] This Court recognizes that Lantini waited fourteen years to bring the billing problem to National Grid's attention and that the $18,029.95 retroactive charge is not insignificant. Nevertheless, Stevens failed to raise the affirmative defense of laches at the administrative hearing, and this Court will not infer as to his reasons for doing so. See DiPrete, 635 A.2d at 1160.

(stating that "lower court decisions are neither binding . . . nor do they establish precedent"). That case involved a billing dispute between a business owner, the Providence Water Supply Board of Providence (Providence Water), and the Narragansett Bay Commission for undercharged water supply between 1997 and 2006. Providence Water Supply Bd. of Providence, R.I. v. Div. of Pub. Utils. & Carriers of R.I., PC-2009-5913 at 1-2 (R.I. Super. Ct. Dec. 28, 2010). The Division found that Providence Water failed to take corrective action after discovering the billing mistake in 2000 and only required the business owner to pay for water consumption between 1997 and 2000. Id. at 9-10. On appeal, the Superior Court stated that "upon a finding that the bill was unreasonable or unjust, or discriminatory, the Division was not clearly erroneous in fashioning remedial relief." Id. at 20. In so doing, however, the Superior Court explained that the Division has broad powers to order equitable relief when it deems necessary. Id. Thus, this case stands for the proposition that although the Division may order equitable relief, such power is discretionary, and the reviewing court must defer to the agency's determination unless it is clearly erroneous. See id. This case, therefore, further supports this Court's holding that the Division's refusal to grant remedial relief was not an abuse of discretion because such an award is within the agency's discretion. See §§ 39-3-13.1; 39-4-10; In re Lallo, 768 A.2d at 926.

IV

Conclusion

After reviewing the entire record, this Court concludes that there is competent evidence on the whole record to support the Division's decision. Moreover, the Division did not abuse its discretion, act in violation of statutory provisions, or act in excess of its statutory authority in denying equitable relief nor will this Court impose an equitable remedy for the reasons stated

above. Stevens' substantial rights have not been prejudiced. Accordingly, this Court upholds the Division's decision. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Gregory Stevens d/b/a F. SAIA Restaurants, LLC v. National Grid
CASE NO:	PC 12-6305
COURT:	Providence County Superior Court
DATE DECISION FILED:	July 1, 2014
JUSTICE/MAGISTRATE:	Vogel, J.
ATTORNEYS:	
For Plaintiff:	Gregory Stevens, *pro se*
For Defendant:	John P. McCoy, Esq.; Leo J. Wold, Esq.