



Agenda Date: 12/14/11
Agenda Item: VIII E

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

CUSTOMER ASSISTANCE

ARNO MAYER AND THE ARNO MAYER TRUST,)
Petitioner)
)
V.)
)
NEW JERSEY AMERICAN WATER COMPANY.,)
Respondent)

ORDER OF EXTENSION

BPU DOCKET NO. WC10120888U
OAL DOCKET NO. PUC 1290-11

(SERVICE LIST ATTACHED)

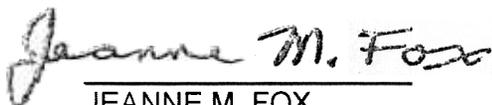
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on August 26, 2011. By prior Order(s) the period for issuing a Final Decision was extended to January 9, 2012. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision as there are no scheduled Board agenda meetings prior to the expiration date.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until February 23, 2012.

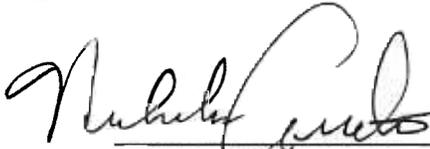
DATED: 12/15/11

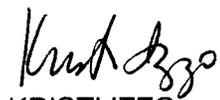
BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

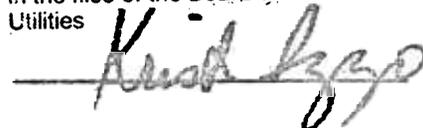

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

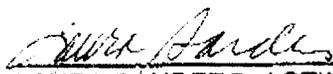
I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



Date Board mailed Order to OAL: 12/16/11

cc: Service List Attached

DATED: 12/20/11



LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

^{final.}
Date OAL mailed executed Order to Board: 12/20/11

Date Board mailed executed Order to Parties: 12/20/11

ARNO MAYER AND THE ARNO MAYER TRUST

V.

NEW JERSEY AMERICAN WATER COMPANY

BPU DOCKET NO. WC10120888U
OAL DOCKET NO. PUC 1290-11

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BPU MAILROOM

AUG 26 2011

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 1290-11

AGENCY DKT. NO. WC10120888U

ARNO MAYER, ARNO MAYER TRUST,

Petitioner,

v.

**NEW JERSEY AMERICAN WATER
COMPANY,**

Respondent.



Carl J. Mayer, Esq., for petitioner (Mayer Law Group, attorneys)

Stacey A. Mitchell, Esq., for respondent (Cozen O'Connor, attorneys)

Record Closed: May 5, 2011

Decided: August 25, 2011

BEFORE PATRICIA M. KERINS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Arno Mayer (Mayer) seeks relief from the Board of Public Utilities (BPU) for an interruption of water service and the replacement of his water meter by respondent New Jersey American Water Company (American Water). Mayer asserts that he was not provided with notice of the water-service interruption and the change from an analog meter to an automated remote water-reading device.

Mayer filed his petition in this matter with the BPU on December 6, 2010. The case was transmitted to the Office of Administrative Law (OAL) on February 2, 2011, for hearing as a contested case. A telephone conference was held on February 24, 2011, and the matter was heard on May 5, 2011. The record closed on that date. An extension of time to issue the Initial Decision was granted.

FACTUAL DISCUSSION

Many of the material facts are not in dispute. Mayer resides in a home on Battle Road in Princeton, New Jersey, which is owned by the Arno Mayer Trust. In the fall of 2010, the eighty-four-year-old Mayer resided in the home with an infant and a pregnant woman. The home's water service is provided by American Water, with usage measured by a meter. In 2010, that meter was an analog meter, most recently installed in or about 2006.

From March 2010 through September 2010 American Water sent three written notices to Mayer that his water meter was "due to be replaced" or removed "for testing," and that he should call its authorized contractor, Kentrel Corporation, to schedule an appointment. (R-1; R-2; R-3.) The second and third letters stated that if petitioner did not allow respondent access to the meter, his water service could be turned off, referencing State regulations. (R-2; R-3.) The third request stated that petitioner's water service would be turned off if he did not respond within ten days of the notice, or it could be turned off as soon as fourteen days from the date of the letter. (R-3.)

In October 2010, after not receiving a response from Mayer to the above letters, American Water staff attempted to contact him by telephone regarding the meter changeover. Mayer did not agree with the meter removal and turned the matter over to his son and counsel, Carl Mayer, who then contacted American Water on or about October 14, 2010. After discussing the issue with American Water's in-house counsel, Carl Mayer filed an email complaint with the BPU. On November 23, 2010, American Water employees suspended water service to the home for a period of five to fifteen

minutes while connecting a new remote-read digital meter in a pit along Battle Road in a utility right of way. The old meter remained in place within the home. American Water staff left a notice on the door regarding the changeover, and on November 29, 2010, the company sent Mayer a letter regarding the changeover. The letter advised him that he could contact the company to arrange for the removal of the old, now-disconnected meter or he could allow it to remain in place. On December 2, 2010, American Water sent Carl Mayer a letter again discussing the removal of the nonfunctioning water meter from the home. On December 6, 2010, petitioner filed his formal petition with the BPU regarding the suspension of service and installation of the new meter.

In presenting his case, petitioner relied upon the testimony of his son, Carl Mayer. Stating that he was familiar with his father's affairs, Carl Mayer disputed whether his father ever received the initial three letters (R-1; R-2; R-3) from American Water regarding the removal of the meter. It was in October 2010, however, when his father received telephone contacts from American Water regarding the proposed meter change, that he became involved. He asserted that his father agreed to allow access for meter testing only, disagreeing with the meter changeover to the newer digital-format meter. In his October telephone conversation with American Water's deputy general counsel, Jordan Mersky, Carl Mayer stated his father's objections to the meter changeover. Apparently the conversation did not go well, resulting in Mayer's initial filing of a complaint online with the BPU on October 14, 2010. Despite his representation of his father and his discussions with Mersky, Carl Mayer stated he was not advised of American Water's plan to change the meter by simply installing the new one in the right-of-way pit along Battle Road in November 2010. He further represented that his father was not advised of the meter change and its accompanying suspension of service prior to the date it occurred. No evidence was presented by petitioner regarding any physical damage to the home or of any harm to individuals resulting from the service disruption or meter change as set forth in his petition.

Carl Mayer also presented his father's objections to the new type of meter installed by American Water. Citing consumer complaints in other jurisdictions where the digital remote-read meters have been introduced, he voiced concerns over their performance and the high probability of inaccurate readings. While acknowledging that

those issues were beyond the purview of the matter at hand, he pointed to his father's concerns as not only a catalyst for this dispute, but as valid matters for review by the BPU in its regulatory and rulemaking roles.

In response, American Water presented the testimony of Selina Kearney-Rogers, whom it employs as a service delivery specialist. She reviewed the history of the company's attempts to contact Mayer regarding what was alternately described in its letters as meter testing or meter removal. When no response from Mayer was received to its first three letters, American Water staff tried telephone contact. A call was received from Mayer on October 5, 2010, and company records regarding those calls to and from Mayer were placed in the record. (R-4; R-5.) After Carl Mayer called on behalf of his father in mid-October 2010, the matter was transferred to the legal department and the company decided to place the new meter in the roadway right of way, rather than access the home. That changeover took place on November 23, 2010. Kearney-Rogers stated that a company representative tried telephone contact and knocked on the door to advise Mayer of the meter change and service disruption, but no one answered. A notice was then left on the door.

After a review of the record in this matter, I **FIND** that American Water sent petitioner three letters between March and September 2010 requesting access to his home for either testing or replacement of the water meter. While petitioner disputes receiving those letters, by October 2010 he did respond to American Water by telephone regarding its request. By mid-October 2010 the eighty-four-year-old petitioner had turned the matter over to his son and counsel. Carl Mayer was credible in his testimony that he advised the respondent that although his father would allow access to have the meter tested, he did not consent to it being replaced with a digital remote-read device. After the filing of a complaint with the BPU in mid-October and communications with a deputy general counsel at American Water, neither respondent nor his counsel received further notice of the date and time for the meter changeover and the accompanying service disruption until the date it occurred, November 23, 2010.

I further **FIND** that by mid-October 2010 respondent was on notice that the Mayer home on Battle Road was occupied at the time by an eighty-four-year-old individual, as well as an infant and a pregnant woman.

LEGAL DISCUSSION

In this matter, petitioner seeks several forms of relief arising from respondent's action in temporarily suspending his water service and replacing his analog meter. He seeks an order requiring American Water to replace the new water meter with an analog device. His petition further requests that a fine be levied against respondent, along with monetary damages, and other costs. While the petition also requests that the BPU "enjoin" the use of meters using the remote-read format until their use can be investigated, petitioner acknowledges that any such action is beyond the scope of this matter. The issue to be addressed, therefore, is whether respondent acted within the scope of the regulations when it installed a new water meter on petitioner's property and whether it provided appropriate notice of such change.

Regulations concerning meters for utilities are set forth in N.J.A.C. 14:3-4.1, and regulations specific to water meters at N.J.A.C. 14:9-4.1. Utilities are to furnish meters for their customers' usage pursuant to standards for their location and testing. Testing of water meters is to occur according to a schedule set forth in N.J.A.C. 14:9-4.1. The regulations do not specify the type of meter to be provided, i.e., analog or digital remote read, nor do they provide customers with a choice of meter type. The regulations also state, at N.J.A.C. 14:3-3.6(a):

The utility shall have the right of reasonable access to customer's premises, and to all property on the customer's premises, which is furnished by the utility, at all reasonable times for the purpose of inspection of customer's premises incident to the rendering of service including reading meters; inspecting, testing, or repairing its facilities used in connection with supplying the service; or the removal of its property.

Under the regulations, therefore, petitioner was required to allow respondent reasonable access to the meter it had installed on his property. Access is allowed whether for inspection, testing or removal. While respondent's letters to petitioner regarding access to his property reference both testing and a meter changeover, and are somewhat confusing, the regulations are clear that the utility has a right to access in either case.

In this matter, however, respondent abandoned its initial attempt to access petitioner's home and simply installed a new meter along the road in its right of way. The issue remaining, therefore, is whether the notice of the accompanying suspension of service to effect the installation of the new meter along the right of way was adequate.

Before planned interruptions for operating reasons, utilities must provide reasonable notice to all affected customers to the extent reasonably possible, and the work shall be planned so that customer inconvenience is minimized. N.J.A.C. 14:3-3.7(h); N.J.A.C. 14:3-3A.1(d). Additional notice requirements that apply to a temporary suspension of service to a residential customer provide in relevant part:

(a) The notice requirements in this section shall apply in addition to the requirements in N.J.A.C. 14:3-3A.3.

(b) Each public utility shall annually notify all residential customers that, upon request, notice of discontinuance of service will be sent to a designated third party, as well as to the customer.

(c) Each public utility shall make good faith efforts to determine which of their residential customers are over 65 years of age, and shall make good faith efforts to notify such customers of discontinuance of service by telephone in addition to notice by regular mail. This effort may consist of an appropriate inquiry set forth on the notice informing customers that they may designate a third party to receive notice of discontinuance. This provision shall not apply to utilities that make good faith efforts to contact all residential customers by telephone prior to discontinuance and file with the Board a statement setting forth such procedure.

(g) On all notices of discontinuance to residential customers, from all public utilities, there shall be included:

1. A statement that the utility is subject to the jurisdiction of the New Jersey Board of Public Utilities; which includes the address and the following telephone numbers for the Board: (973) 648-2350 and 1-800-624-0241 (toll free)

[N.J.A.C. 14:3-3A.4 (emphasis added).]

Other notice requirements apply to either discontinuance of service for nonpayment, discontinuance of electric or gas utilities, or discontinuance of water service to customers with fire-protection service or multi-use service.

The regulations further provide that a utility is entitled to suspend services if a customer refuses "reasonable access to the customer's premises in accordance with N.J.A.C. 14:3-3.6." N.J.A.C. 14:3-3A.1(a)(5)(i). A utility also may suspend, curtail, or discontinue services for "making permanent or temporary repairs, changes or improvements in any part of its system." N.J.A.C. 14:3-3A.1(a)(1). The only limitation on this right is to provide reasonable notice to the extent reasonably possible. N.J.A.C. 14:3-3.7(h); N.J.A.C. 14:3-3A.1(d).

In arguing that it provided adequate notice to petitioner that his service was to be suspended, respondent points to the letters sent to petitioner between March and September 2010, and its attempts to discuss the matter with him by telephone in October 2010. While the letters reference a discontinuance of service for his failure to provide access to his home, they are open-ended and non-specific as to the timing of the suspension. While the third letter stated that the water would be "turned off" within ten days if there was no response to the letter, petitioner did contact respondent by early October. Although he did not consent to access, American Water was contacted shortly thereafter by his son, Carl Mayer. By mid-October, respondent was on notice that petitioner was elderly, with an infant and a pregnant woman also in residence at the home. Further, respondent's own legal department was aware of those facts, as well as the complaint filed with the BPU regarding the respondent's handling of the matter to date. Nevertheless, no further notice of the meter changeover, or of the suspension of

service which would accompany it, was given to the eighty-four-year-old petitioner, or his son and counsel, until the day of the new meter installation over a month later on November 23, 2010. While one of respondent's employees did attempt telephone contact and did knock at the door on that date, no one answered, and a notice was left on the door.

It is within the context of those facts that a determination is to be made whether adequate notice was given of the suspension of service on November 23, 2010. The regulations governing the suspension of service in such a situation are not specific, requiring only reasonable notice. Absent further regulatory standards, the determination of what is reasonable is fact-specific. In this case, respondent's earlier letters were not responded to by the eighty-four-year-old petitioner. When he did make contact with the company in mid-October, it was clear that access to remove the meter was an issue with the elderly man. After discussions with his son and counsel were inconclusive and a complaint was filed with the BPU, American Water chose not to provide further notification until the day of the service disruption and meter change. Although the company did attempt telephone contact and a knock on the door, no prior definitive notice of the date and time of the service disruption was provided to the residents of the home.

Although the service disruption was short in duration, the failure to provide a more definite date and time for the water shutoff was not reasonable in this case. Over a month had passed since contact between counsel for the respective parties, without further notice from American Water regarding its intentions. The company was well aware that the home was occupied by vulnerable members of the community, the elderly, the very young and a pregnant woman. Given the facts of this case, they were entitled to a more current and reasonable notice of the service disruption planned by the company and its legal department. While American Water had the time to plan for the meter changeover and service disruption, the members of the household did not have that luxury. Given the standoff between the parties, a written notice prior to the date would have given them the opportunity to plan for the service disruption and the possibility that unforeseen circumstances could extend the disruption over a longer period of time. Under the unique facts of this case, therefore, I **FIND** that respondent

did not provide reasonable notice to petitioner of the service disruption on November 23, 2010.

While there was a lack of reasonable notice by respondent, the service disruption was short and no damages or harm to individuals was shown by petitioner. Yet, even if such had occurred, the regulations provide no specific remedy for a failure to provide reasonable notice prior to a temporary suspension of service, nor for penalizing a utility that fails to give reasonable notice. Muise v. GPU, Inc., 332 N.J. Super. 140, 150 (App. Div. 2000). While the BPU has general supervisory, regulatory, and jurisdictional power and control over all public utilities and their assets, N.J.S.A. 48:2-13, there is no express statutory authority permitting the BPU to award money damages. Integrated Tel. Serv., Inc. v. Bell Atlantic-New Jersey, Inc., PUC 5737-97, Initial Decision (December 29, 1999) <<http://lawlibrary.rutgers.edu/oal/search.html>>. Moreover, "the Legislature has not authorized the Board by statute to decide . . . ' . . . disputes alleging negligence, intentional tort or any common law cause of action for damages [because they] are within the jurisdiction of the courts and cannot constitutionally be entertained by the Board either on liability or damages issues." Mondics v. Pub. Serv. Elec. and Gas Co., PUC 11663-09, Initial Decision (April 19, 2010) <<http://lawlibrary.rutgers.edu/oal/search.html>> (denying an electric-utility customer damages for computer equipment that was destroyed by an electrical surge because the Board and, therefore, the OAL did not have jurisdiction to hear a damages claim) (citing Brooks v. Pub. Serv. Elec. Co., 1 N.J.A.R. 243, 248 (Board of Public Utilities 1981)).

Based on the above, petitioner has prevailed in its case that respondent failed to provide reasonable notice of its service disruption to his home. However, the remainder of the relief sought is denied.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner's request that respondent be found not to have provided reasonable notice of its water service

LIST OF WITNESSES

For petitioner:

Carl Mayer

For respondent:

Selina Kearney-Rogers

LIST OF EXHIBITS

For petitioner:

- Email from Carl Mayer to NJ American Water, dated October 14, 2010
- P-2 Online Complaint Form of Board of Public Utilities filled out by Arno Mayer
- P-3 Copy of service call ticket, dated November 23, 2010
- Water Meter
- Letter from Jordan Mersky to Carl Mayer, dated December 2, 2010
- P-6 Letter requests from NJ American Water to Arno Mayer and computer printouts of customer service communications with Arno Mayer
- Water bills to Arno Mayer, dated December 3, 2010, January 5, 2011, and February 7, 2011
- Email from Carl Mayer and articles regarding water meters

For respondent:

- Letter to Arno Mayer from NJ American Water, dated March 26, 2010
- Letter to Arno Mayer from NJ American Water, dated September 3, 2010
- Letter to Arno Mayer from NJ American Water, dated September 27, 2010
- Computer printout of conversation between NJ American Water and Arno Mayer
- R-5 Computer printout of conversation between NJ American Water and Arno Mayer

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Computer printout of multiple communications between NJ American Water and Arno Mayer

Letter to Arno Mayer from NJ American Water, dated October 13, 2010

Letter from Jordan Mersky to Carl Mayer, dated December 2, 2010