



Agenda Date: 4/23/14

Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

SETH C. KURZ,)	ORDER APPROVING
Petitioner,)	INITIAL DECISION
)	
V.)	
)	
UNITED WATER NEW JERSEY, INC.,)	BPU Docket No. WC12100930U
Respondent)	OAL Docket No. PUC 01404-13

Parties of Record:

Seth C. Kurz, for Petitioner, pro se
John P. Wallace, Esq., for Respondent

BY THE BOARD:

On October 9, 2012, Seth C. Kurz ("Petitioner") filed a petition with the Board of Public Utilities ("Board") requesting a formal hearing related to a billing dispute with United Water New Jersey, Inc. ("Respondent" or "United Water") for water services rendered by Respondent. Petitioner claimed that United Water incorrectly billed \$2,692.49 in June 2012 for retroactive water consumption of 215,000 gallons from March 2012 to May 2012. Petitioner further alleged that water, water facility, sewer, and sewer facilities charges from May 30, 2012 to August 27, 2012 in the amount of \$139.10 were double-billed at \$46.05. United Water filed an answer on December 13, 2012, denying Petitioner was incorrectly billed for water consumption when its meter had failed to register water consumption since 2005.

After the filing of Respondent's answer, the Board transmitted this matter to the Office of Administrative Law ("OAL") for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. This matter was assigned to Administrative Law Judge ("ALJ") Leland McGee.

The Initial Decision was filed with the Board on February 21, 2014, dismissing the petition. The procedural history as stated in the Initial Decision will not be repeated, except as necessary.

On November 1, 2013, Respondent moved for summary decision, arguing no genuine issue of material fact exists where an accurate meter test report reflects Petitioner consumed water from August 2005 to March 31, 2012 but was not billed for that period of consumption. As noted in its certifications, Respondent removed the subject meter on March 31, 2012 and discovered that the remote meter reading equipment had become inoperable, by failing to register any water consumption since the reading in August 2005. The meter reading revealed 209,900 gallons of

water used from August 2005 to March 31, 2012, but Petitioner had not been billed during that period due to the failed remote reading device. The annexed meter test report reflected a 98% low flow, a 100% intermediate flow, and a 98.8% full flow accuracy rate. Relying on the bills provided by Petitioner in response to discovery as well as United Water's own records, Respondent certified that no water consumption was reflected in bills from May 2005 to September, 2011. Accordingly, Respondent issued a backbill for \$1,414.73 for retroactive sewer charges and \$1,114.13 for retroactive water charges. On the backbill, Respondent also included \$163.63 for current water charges, sewer facility charges and water facility charges from March 31, 2012 to May 30, 2012, for a total of \$2,692.49.

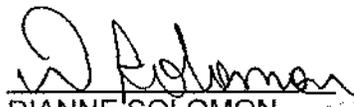
Petitioner did not file any opposition to Respondent's motion for summary decision. On January 28, 2014, the ALJ granted summary decision. On February 12, 2014, the ALJ issued an Initial Decision Summary Decision, finding that Petitioner has failed to respond to the motion for summary decision or to otherwise move forward with his case. Therefore, the ALJ ordered that Respondent's motion for summary decision shall be granted and Petitioner's request for a hearing is dismissed.

Exceptions were not filed. On March 19, 2014, a 45-day extension of time was granted to review the record in its entirety.

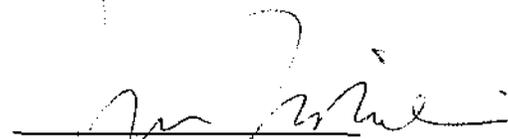
Where a meter is found to be registering less than 100 percent of the service provided, the utility may adjust its charges and bill retroactively if the meter was tampered with, the meter failed to register, or the customer should reasonably have known that the bill did not reflect actual usage. N.J.A.C. 14:3-4.6(4)(d)(1-3). Uncontroverted proofs show the meter failed to register water consumption for a multi-year period. In addition, Petitioner failed to oppose the motion or otherwise proceed with his complaint. After a careful review of the record, the Board **HEREBY ADOPTS** the Initial Decision, granting summary decision in United Water's favor and dismissing the petition.

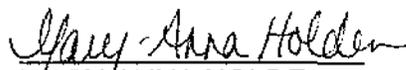
DATED: 4/24/14

BOARD OF PUBLIC UTILITIES
BY:

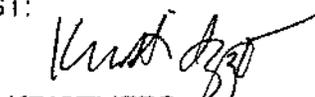

DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

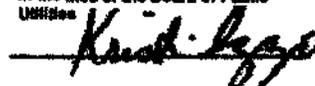

JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA 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



SETH C. KURZ

V.

UNITED WATER NEW JERSEY, INC.

BPU DOCKET NO. WC12100930U

OAL DOCKET NO. PUC 01404-13

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REC'D

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NJ BPU
CASE MANAGEMENT



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED

FEB 20 2014

BOARD OF PUBLIC UTILITIES
MAIL ROOM

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 01404-13

AGENCY DKT. NO. WC12100930U

SETH KURZ,

Petitioner,

v.

UNITED WATER NEW JERSEY,

Respondent.

Seth Kurz, for petitioner, pro se

John P. Wallace, Esq., for respondent

Record Closed: January 28, 2014

Decided: February 12, 2014

BEFORE **LELAND S. MCGEE**, ALJ:

PROCEDURAL HISTORY AND DISCUSSION

On February 5, 2013, 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 prehearing conference was held on March 26, 2013, and a Prehearing Order issued the same date at which time a schedule for completion of discovery was established. An Evidentiary Hearing was scheduled for September 12,

2013. On March 28, 2013, petitioner filed motion for Default on the grounds that respondent filed its Answer out of time. On the same date, the undersigned denied the motion.

On May 17, 2013, respondent filed a Motion for More Specific Answers to Interrogatories. On July 12, 2013, a Prehearing Conference was held at which time Interrogatory responses were discussed. As a result, by letter dated July 12, 2013, respondent modified its Interrogatory request and a new date for responses by petitioner was established.

By August 16, 2013, petitioner had not responded to the Interrogatories and on August 23, 2013, respondent filed a Motion to Dismiss the petition. On September 11, petitioner submitted Answers to Interrogatories.

On September 20, respondent filed its Response to petitioner's March 28, 2013, Motion for Default.

On October 7, 2013, respondent requested permission to file a Motion for Summary Decision. By letter dated October 10, 2013, the undersigned confirmed a schedule for the parties to submit briefs in support of their respective positions on the Motion for Summary Decision.

On November 1, 2013, respondent mailed its Motion for Summary Decision; however, it was not received by the undersigned until follow-up inquiry and resubmission on January 23, 2014. On January 28, 2014, the undersigned granted the motion.

ORDER

Petitioner has failed to respond to the Motion for Summary Decision or to otherwise move forward with his case. It is hereby **ORDERED** that the Motion for Summary Decision shall be **GRANTED** and petitioner's request for a fair hearing 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.

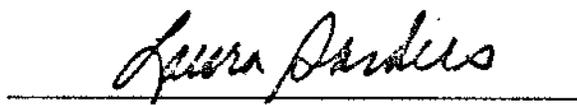
Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 12, 2014
DATE


LELAND S. MCGEE, ALJ

Date Received at Agency: February 12, 2014

Date Mailed to Parties: **FEB 18 2014**
lr


DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE