



Agenda Date: 5/21/14
Agenda Item: 7A

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

ELAINE DUBELMAN,)	ORDER ADOPTING
Petitioner,)	INITIAL DECISION
)	
V.)	
)	
UNITED WATER NEW JERSEY, INC.,)	BPU DOCKET NO. WC12060563U
Respondent)	OAL DOCKET NO. PUC 12139-12

Parties of Record:

Susan E. Schneier, Esq., on behalf of Petitioner, Elaine Dubelman
John P. Wallace, Esq., on behalf of Respondent, United Water New Jersey, Inc.

BY THE BOARD:

The within matter is a dispute in regard to billings over water consumption between Elaine Dubelman (“Petitioner”) and United Water New Jersey, Inc. (“Respondent” or “United Water”). This Order sets forth the background and procedural history of the Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10.

Having reviewed the record, the Board of Public Utilities (“Board” or “BPU”) now **ADOPTS** the Initial Decision rendered on February 20, 2014.

BACKGROUND/PROCEDURAL HISTORY

Petition

On June 27, 2012, Petitioner filed a petition with the Board disputing a March 5, 2012 bill from Respondent requiring her to pay \$5,537.12 for water service usage from November 15, 2011 until January 13, 2012 (“March 2012 bill”).¹ (Petition ¶ 4). Petitioner, who has resided in the same residence for over fifty years, claimed that her typical bill for the same time period was

¹ The March 2012 bill for usage from November 15, 2011 to January 13, 2012 is actually for \$5,140.79. An extra \$396.33 was a balance that was past due that was added to the \$5,140.79, which makes the total \$5,537.12. See Exhibit P-1 referenced in the Administrative Law Judge’s (“ALJ”) February 20, 2014 Initial Decision.

approximately \$400. (Petition ¶¶ 1, 3). Petitioner also alleged that when brought to Respondent's attention, Respondent agreed to test for leaks and to remove the meter for testing, but refused to correct the bill. (Petition ¶ 5). Petitioner requested a formal hearing before the Board to resolve this dispute. (Petition ¶ 10).

Answer

On August 22, 2012, Respondent filed an answer generally denying Petitioner's allegations and demanding that Petitioner pay the disputed bill in full.

Petitioner's Reply to Respondent Answer

On September 5, 2012, Petitioner filed a reply to Respondent's answer. Petitioner's reply contained statements describing the relationship between Petitioner and Respondent, including that Respondent had been sending Petitioner invoices for water service usage to the same residence at issue for over forty-nine years, and that Respondent had knowledge and information concerning the bills sent to Petitioner, in particular the March 2012 bill. (Reply to Answer ¶¶ 1, 4). Petitioner alleged that while Respondent agreed to test the meter in question, and did so, Respondent did not correct the March 2012 bill, and that the failure to resolve this dispute forced Petitioner to retain counsel. (Reply to Answer ¶¶ 5, 6, 7). In addition, Petitioner asserted that Respondent failed to notify Petitioner of her right to witness the testing of the water meter. (Reply to Answer ¶ 9).

Matter Transmitted to the Office of Administrative Law

On August 31, 2012, the matter was transmitted to Office of Administrative Law ("OAL").

Amended Petition

On June 14, 2013, Petitioner filed an amended petition. While Petitioner repeated the allegations made in the earlier filing against Respondent, Petitioner also added a September 18, 2012 bill in the amount of \$1,948.51 for water service usage from May 16, 2012 through September 6, 2012 ("September 2012 bill") to the dispute. (Amended Petition ¶¶ 1-5). Among other things, Petitioner demanded that Respondent remove the charges stemming from the March 2012 and September 2012 bills from her account and pay her legal fees and costs. (Amended Petition ¶ 7).

Answer to Amended Petition

On July 1, 2013, Respondent filed an answer to Petitioner's amended petition. Respondent repeated its answers generally denying Petitioner's allegations and demanding that Petitioner pay the disputed bills in full. (Answer to Amended Petition ¶¶ 1-4, 7).

December 10, 2013 Hearing

On December 10, 2013, ALJ Kimberly A. Moss held a hearing. ALJ Moss heard the testimony of Petitioner, James Commerford, Simone Reeves, Brian Allan², Ryan Gallagher, Harvey Culver, Leonard Conticelli, Juan Freria and Antonio Vicente.

² Mr. Brian Allen is referred to as "Michael Allen" in the Initial Decision.

² Mr. Juan Freria is referred to as "Ruben Moreira" in the Initial Decision.

Petitioner, a widow living alone on her property, testified that the March 2012 bill for \$5,140.79 from Respondent claimed that Petitioner utilized 1,021,768 gallons of water from November 5, 2011 to January 13, 2012³. (T7-18 to 8-15; 33-22 to 34-10; P-1). Petitioner also testified that the September 2012 bill for \$1,948.51 from Respondent claimed that Petitioner utilized 350,300 gallons of water from May 16, 2012 to September 6, 2012⁴. (T8-24 to 9-11; P-2). Petitioner stated that she was unaware of any leaks in her home or water on the exterior of her home over the past ten years. (T11-3 to -15; 40-15 to -21, 42-13 to -21). Petitioner also said that she had contacted Respondent after receiving the March 2012 bill and given Respondent permission to remove the meter and test it. According to Petitioner, Respondent also agreed to check for leaks on Petitioner's property, but found none. (T12-10 to 13-25; 14-9 to -13). However, Petitioner testified that she was not informed by Respondent of her right to witness or have a representative observe the testing of the meter. (T14-14 to -20; 45-19 to -25). Petitioner also testified that she did not possess any proof that the meter which had calculated water consumption for the period covered in the March 2012 bill was not working properly. (T26-6 to -11). Petitioner stated that Respondent removed that meter in April 2012 and replaced it with a new one, which meter calculated water consumption for the period covered in the September 2012 bill, is still working on her property, and that Petitioner is satisfied with its accuracy. (T26-14 to 27-6; 28-5 to -9; 30-13 to -21; 40-9 to -14).

Petitioner testified that representatives from United Water came to her property a number of times to read the meter manually, and also to check for leaks, which were not found. (T15-14 to 17-7; 18-15 to -18). Petitioner conceded that the March 2012 bill was based on an actual reading, which shows how much water had gone through the meter, and that the bills preceding the March 2012 bills were based on estimated readings, which do not accurately reflect consumption. (T18-25 to 21-4, 22-3 to 26-5; R-1; R-2). Petitioner also stated that representatives from United Water monitored her water usage consumption on a daily and/or weekly basis to determine why consumption rates were so high on Petitioner's property, and that she was informed of a substantial increase in consumption during the periods in which the sprinkler system and pool were operational. (T35-10 to -19).

Petitioner's next witness was James Commerford, who has serviced Petitioner's underground sprinkler system since 1998. He is a licensed underground irrigation inspector who has been installing underground irrigation systems for over forty years. (T49-12 to 50-5, 50-7 to -12). Mr. Commerford testified to closing and re-opening Petitioner's underground irrigation system in 2011. (T50-17 to 51-12). He estimated that Petitioner's system used about 4,000 gallons of water per week. (T54-7 to -14). Mr. Commerford further testified that if the irrigation system is leaking, there will be visible evidence of such, including puddles of water, but there were no company records of such evidence. (T54-17 to 56-17). After he performed a test for Petitioner to see if there were any leaks on August 25, 2013, he concluded that there were no leaks in the system. (T55-6 to -7; 56-18 to 58-5). On cross-examination, Mr. Commerford also explained that in October 2011, the system's handles rotted off, preventing the water from being turned off from November 4 until November 17, 2011. (T59-24 to 60-19). He also testified that in May 2012, when the system was turned on, a broken head was found, as well as several broken

³ Petitioner testified at the hearing that her March 2012 bill was for usage starting on November 5, 2011. However, the actual bill indicates service from November 15, 2011. See Exhibit P-1 to the ALJ's February 20, 2014 Initial Decision.

⁴ Petitioner testified that Respondent claimed that she used 350,300 gallons of water from May 16, 2012 to September 6, 2012. However, the actual bill indicates she used 355,300 gallons of water in that time period. See Exhibit P-2 to the ALJ's February 20, 2014 Initial Decision.

is unclear what the result of that visit was, but Mr. Vicente indicates that upon arriving at the residence and looking over the actual bills, he believed and informed Mrs. Dubelman and the plumber present that he believed the bills were seasonally related because the winter bills from actual meter readings demonstrated low consumption. (T120-3 to 121-5; 122-24 to 123-21). Mr. Vicente returned to Petitioner's residence on May 9, 2013 and met with the irrigation contractor. (T121-6 to -9). The irrigation system was started up, and two leaks were discovered. (T121-6 to 124-13; P-1; P-2). Mr. Vincente therefore asked for weekly readings to be taken so that Respondent could monitor readings of water consumption on Petitioner's property. (T122-16 to -21). Mr. Vicente also testified about the results of his field testing, which showed that between June 7 and June 25, 2013 water consumption on Petitioner's property was about 400,000 gallons pro-rated per year, which is equivalent to between \$7,000 and \$8,000 per year. (T125-10 to 129-4; R-18). He stated that the area in which Petitioner's residence is located is in the Palisade formation, which is a rock formation with lots of cracks, fissures and other routes for water to be absorbed and which enables water not to surface. (T130-8 to -25; 133-19 to -134-10).

Closing Statements

Following the hearing, Petitioner filed a closing statement, noting that Petitioner was contesting the March 2012 and September 2012 bills⁵. (Petitioner's Closing Statement at 1). Petitioner claimed that Respondent was billing her for water consumption over a few months that was ten times what a family of four typically uses in a year. Id. at 2. Petitioner stated that no evidence of leaks was ever found either inside Petitioner's residence or outside the home despite multiple, exhaustive searches by both Respondent's representatives and Petitioner's experts. Ibid. Petitioner also argued that Respondent's charts (R-18) do not support water usage patterns by Petitioner that would explain the bills in dispute, especially considering that Petitioner's pool is only open for a few months and the sprinkler system is likewise operational only for several months. Id. at 3. Furthermore, Mr. Gallagher, Petitioner's pool expert, who had maintained Petitioner's pool for almost ten years, testified that he never noticed any visible indicators of leaks, and that there had been no issues with Petitioner's pool aside from a minor leak near the skimmers that caused the water level to drop a few inches. Id. at 4. Mr. Commerford, who maintained Petitioner's sprinkler system, testified similarly, as he also performed static pressure tests that did not indicate leaking. Id. at 4, 5. In addition, Petitioner claimed that all of Respondent's witnesses testified to not seeing any visible evidence whatsoever of leaks on her property. Id. at 5.

Petitioner also claimed that Respondent violated N.J.A.C. 14:3-4.5(c) with regard to the March 2012 bill by not informing Petitioner of her right to have the meter test witnessed by BPU. (Petitioner's Closing Statement at 6). Furthermore, Petitioner argued that because Respondent did not fulfill its obligations with regard to N.J.A.C. 14:3-4.5(c), and because such meters are routinely destroyed after testing, Respondent's actions constitute spoliation of the evidence. (Petitioner's Closing Statement at 6, 7). As a consequence, Petitioner argues that Respondent's failure to inform Petitioner of her rights to witness the meter testing before the destruction of the water meter should result in the disregarding of the March 2012 bill. Id. at 7.

In conclusion, Petitioner argues that because the water consumption bills are so inconsistent with Petitioner's historical usage, and because she was never given an opportunity to have someone representing her interests witness the testing of the meter that was removed on April 6, 2012 before it was destroyed, which violated Respondent's obligations under N.J.A.C. 14:3-

⁵ Petitioner's closing statement was unsigned and undated.

4.5(c), the entire March 2012 bill should be disregarded. (Petitioner's Closing Statement at 8, 9). With regard to the September 2012 bill, Petitioner argues that, as there were no leaks on Petitioner's property, and the consumption billed for was inconsistent with Petitioner's historical usage, Respondent's figures must be incorrect and, consequently, the September 2012 bill should be disregarded and a reasonable aggregate based upon past usage be substituted. Id. at 9.

On January 31, 2014, Respondent filed its "final submission." Respondent argues that Petitioner has not met her burden of proof. (Respondent' Brief at 2). Specifically, Respondent argues that Petitioner presented no evidence that the meters were not operating properly. Ibid. Furthermore, Respondent cites to testimony that indicated that a leak was detected in the sprinkler system. Ibid. More specifically, Respondent refers to the testimony of Mr. Commerford, the owner of the sprinkler company that opened and closed the irrigation system on Petitioner's property. Id. at 3. Mr. Commerford testified that two broken pipes were discovered in May 2012 and that in November 2011, handles were rotted off which prevented water from being turned off. Therefore, Mr. Commerford explained, between November 4 and November 17, 2011, water was on for the sprinkler. Id. at 3. Respondent then refers to testimony presented by Mr. Gallagher, the pool service contractor. Id. at 4. Mr. Gallagher testified that there were occasions when the level of the pool dropped two or three inches in 2011 and 2013. Ibid. In conclusion, Respondent argues that Petitioner has not proven that the disputed bills are inaccurate. Id. at 6

February 20, 2014 Initial Decision

In her Initial Decision, ALJ Moss noted her findings of fact as: Petitioner, a customer of Respondent, lived alone during the time in question, and Respondent sent representatives to Petitioner's property multiple times to determine if there was a water leak. (Initial Decision at 2, 6). The Petitioner is contesting two bills from Respondent, a March 2012 bill for \$5,140.47 for service rendered from November 11, 2011 to January 13, 2012, and a September 2012 bill for \$1,948.51 for service rendered from May 16, 2012 through September 6, 2012⁶. Id. at 2. The bills preceding the March 2012 and September 2012 bills were based on estimated readings that did not accurately reflect Petitioner's water consumption. Id. at 6. Petitioner's meter was removed on April 6, 2012, and replaced with another meter for which Petitioner expressed satisfaction. Id. at 2, 7. Petitioner was not informed that she could request that the testing of the removed meter be witnessed by BPU representatives, and the replacement meter was never tested. Ibid. The testing of removed meter #88417927 showed that the meter was running at 98.3 percent, which means that the meter was running slow, so the customer was being billed less than the actual amount of consumption. Id. at 7. On May 11, 2012, when the sprinkler system was opened, two broken pipes and broken wire were found, and the broken pipes may have existed prior to the sprinkler system being closed in September 2011. Ibid. Petitioner noticed that the water in her pool, which holds 20,000 gallons, was lower than it should have been in the lower part of the skimmers. Ibid. In 2013, a leak was found in the last zone of the sprinkler system and, on May 13, 2013, leaks in the sprinkler system were found. Ibid. From June 7, 2013 to June 25, 2013, meter #88418442, the replacement meter that Petitioner testified to being satisfied with, showed consumption of 93 CFF, and afterwards, the consumption was lower. Ibid.

⁶ The March 2012 bill for usage from November 15, 2011 to January 13, 2012 is actually for \$5,140.79. An extra \$396.33 was a balance that was past due that was added to the \$5,140.79, which makes the total \$5,537.12. See Exhibit P-1 referenced in the ALJ's February 20, 2014 Initial Decision.

The ALJ concluded that although Respondent did not inform Petitioner that she could have the meter test witnessed, there was no testimony or evidence to show that the meter test that was performed on #88417927 was inaccurate. Ibid. The ALJ also found that the meter that was used to calculate the March 2012 bill (meter #88417927) was running slow at 98.3 percent, and that Petitioner was being under-billed by Respondent and is not entitled to an adjustment under N.J.A.C. 14:3-4.6. (Initial Decision at 10). Furthermore, while Petitioner contests the September 2012 bill, the meter that was used to calculate it was installed on April 6, 2012, and Petitioner testified to being satisfied with the meter, did not request that the meter be tested, and no testimony or evidence was presented that the new meter was inaccurate. Ibid. In addition, there were two broken pipes in the sprinkler system on May 11, 2012, which may have existed prior to the sprinkler system being closed the previous fall, and the water level at the pool's skimmers was below its normal level. Ibid.

The Initial Decision concluded that Petitioner had not proven by a preponderance of the evidence that she was improperly billed by Respondent. Ibid. Consequently, the ALJ ordered the petition be dismissed. Ibid.

Petitioner's Exceptions

On March 6, 2014, Petitioner filed Exceptions challenging the Initial Decision and requesting that the Board reject the Initial Decision in its entirety, enter an order granting the relief sought in the petition, and impose sanctions on Respondent for its disregard of the Board's regulation, while imposing financial penalties for Respondent's conduct. (Petitioner's Exceptions at 2). Petitioner argues that, as Petitioner's water consumption bills were very high and no meaningful evidence of water leaks on Petitioner's property were discovered, the Initial Decision would result in a miscarriage of justice because it would not punish Respondent for its violation of its regulatory obligations to inform customers of their right to participate in meter testing, and it would empower Respondent by establishing a precedent that renders meter testing requirements meaningless in legitimate billing disputes with customers attempting to exercise their regulatory rights. Id. at 2, 3.

Petitioner submits that the Initial Decision is fatally flawed because it relied upon Respondent's meter test despite Respondent's failure to permit Petitioner to participate in the water meter test process as required by N.J.A.C. 14:3-4.5(c). (Petitioner's Exceptions at 3). Furthermore, Petitioner argues that the regulatory obligation is unequivocal and that the omission is further worsened because Respondent routinely destroys the meters after testing, thus preventing any witnessing or independent testing of the meter, which Petitioner later requested, and thereby constituting spoliation of the evidence. Id. 4, 5. Petitioner contends that because Respondent disregarded its obligations, depriving Petitioner of an opportunity to exercise a regulatory right, the March 2012 bill should be disregarded in its entirety. Id. at 5.

Petitioner argues that the Initial Decision defies common sense and is not based on substantial credible evidence and that, to the contrary, the evidence supports a finding that Petitioner did not use the extraordinary volumes of water charged by Respondent. Id. at 6. Petitioner argues that despite multiple, exhaustive searches of Petitioner's property, no evidence of water leaks were found either inside the home or outside the residence. Ibid. In addition, Petitioner claims that the overwhelming evidence in the record is counter to the ALJ's conclusion, which does not reasonably account for the loss of a tremendous amount of water that was billed for by Respondent. Id. at 7. Moreover, both Mr. Gallagher and Mr. Commerford testified to not having observed any visible indications of leaks on Petitioner's property. Id. at 7, 8. As a result,

Petitioner argues that the Initial Decision ignores substantial and compelling evidence, as there were no leaks on the property to account for the large amount of water for which she was billed. Id. at 9.

Petitioner also argues that the findings in the Initial Decision must be rejected because the ALJ failed to discuss any of the substantial evidence introduced by Petitioner and only quoted BPU regulations along with unsupported conclusions. Id. at 9, 10. Therefore, Petitioner submits that because Respondent failed to comply with the Board's meter testing regulations which confer consumer protection rights upon utility customers and because the ALJ disregarded the evidence demonstrating that the amount of water billed by Respondent could not have been used by Petitioner; the Initial Decision should be rejected. Id. at 11. Further, Petitioner argues that the ALJ's failure to properly consider the evidence and set forth the basis for the ALJ's recommendation, the Initial Decision should be rejected in its entirety and the Board should enter an order granting the relief sought in the petition. Ibid.

Respondent's Reply to Petitioner's Exceptions

On March 11, 2014, Respondent filed a Reply to Petitioner's Exceptions, noting that the March 2012 bill and the September 2012 bill were based on actual meter readings, and that the meter which calculated the March 2012 bill was replaced on April 6, 2012 and, after being tested on April 10, 2012, was found to be running slow in favor of the customer and discarded. (Respondent's Reply to Petitioner's Exceptions at 1). Respondent argues that the Initial Decision was appropriate and supported by a credible consideration of the sufficient evidence on the record and testimony and with a solid legal foundation. Ibid.

Respondent submits that Petitioner failed to support her burden of proof in establishing that the billing was inaccurate. Id. at 2. Additionally, Respondent asserts that Petitioner did not demonstrate that any action by Respondent caused her to receive bills which were excessive for the water which passed through Petitioner's water meter. In addition, Respondent argues that the water usage indicated by the replacement meter supports Respondent's position that there has been water wasted at Petitioner's premises, likely as a result of the operations of the irrigation system and/or the pool, as determined by Respondent's representatives after numerous physical inspections of Petitioner's property and monitoring of water consumption. Ibid.

United Water disputes the claims of spoliation of evidence by pointing to the testimony that reflected that meter #88417927 was tested and discarded after it was found to be running low. Moreover, Respondent notes that readings taken by the replacement meter #88418442 showed high water consumption; thus, confirming that there is a problem at Petitioner's premises that results in water being wasted after passing through the meter. Ibid.

Moreover, Mr. Commerford testified that broken pipes in the irrigation system were not discovered when the system was shut down in November 2011, but were found when the system was opened in May 2012. Id. at 3. Furthermore, both Mr. Commerford and Mr. Vincente testified that Petitioner's home is located in a rocky area in the Palisades which makes it difficult to find leaking pipes as water tends not to surface but to go through the rocks. Ibid.

Respondent argues that the Initial Decision contains more than sufficient facts to support the ALJ's recommendation, as the March 2012 bill was a "catch-up" bill based on an actual meter reading, that there was no testimony or evidence to show that the meter test that was performed on the removed meter was inaccurate, that the broken pipes found in May 2012 may have been

the cause of the water waste, and that there was no testimony that the new meter now operating at Petitioner's premises was not accurate. *Id.* at 3, 4. Accordingly, having failed to meet the burden to establish that the disputed bills were not accurate, Respondent supports the ALJ's Initial Decision to dismiss the petition. *Id.* at 4.

Supplemental Submissions

On March 20, 2014, Petitioner filed a brief to Respondent's Reply to Petitioner's Exceptions. On March 25, 2014, Respondent requested that the Board disregard Petitioner's March 20, 2014 submission because it is not authorized by N.J.A.C. 1:1-18.4(d). As both of these submissions are not authorized under N.J.A.C. 1:1-18.4(d), the Board will not consider either submission.

DISCUSSION AND FINDINGS

After review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of the ALJ to be reasonable and, accordingly, **HEREBY ACCEPTS** them.

In this administrative proceeding, Petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are justifiably before the OAL. *See Atkinson v. Parksekian*, 37 N.J. 143, 149 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tended hypothesis, in all likelihood, is true. *See Loew v. Union Beach*, 56 N.J. Super. 93, 104 (App. Div.), *certif. denied*, 31 N.J. 75 (1959). Although utility companies are required to maintain regular meter reading schedules and make reasonable efforts to perform actual readings on all meters, a utility may estimate a customer's bill if unable to read a meter for any reason. *See N.J.A.C. 14:3-7.2(c)*; *N.J.A.C. 14:3-7.2(e)(1)*. If the customer receives a bill based on an actual meter reading that is 25% higher than the estimated bill, "the utility shall allow the customer to amortize the excess amount." *N.J.A.C. 14:3-7.2(e)(5)*. However, a customer of record, such as Petitioner, is still responsible for the payment of all utility service provided. *N.J.A.C. 14:3-7.1(a)*.

Based on a review of the testimony presented and the documentary evidence submitted, the Board **FINDS** that Petitioner failed to bear her burden of proof. There is nothing in the record demonstrating that the original water meter or the replacement meter were faulty or produced inaccurate readings. Indeed, the record reflects that meter #88417927 was tested by Respondent and found to be underreporting water consumption. (T103-21 to 105-18; R-14, R-16; R-17.) In addition, Petitioner's March 2012 bill was a "catch-up" bill based on an actual meter reading. (T18-25 to 26-3; 38-4 to 39-21; 69-16 to 70-20; 74-3 to 75-5). Therefore, the earlier bills from August 19, 2011 and November 21, 2011 were estimated meter readings that did not accurately reflect Petitioner's actual water consumption. (R-1; R-2). When Respondent investigated the matter and monitored the water consumption, United Water's representatives found that there was a seasonal dynamic at play, as there were substantial increases in consumption during the period of time that the sprinkler system and the pool were operational. (T34-24 to 38-3; 120-19 to -23; 122-24 to 124-9).

Moreover, Petitioner's pool service contractor, Mr. Gallagher, testified that the pool water level would sink, requiring caulking to prevent further water loss. (T40-15 to 42-12). Mr. Gallagher testified that there were leaks requiring repairs in 2011 and 2013. (T94-22 to -24). Additionally, Mr. Commerford described how the irrigation system's handles rotted off, preventing the water from being turned off from November 4 until November 17, 2011. (T59-24 to 60-19).

Furthermore, on May 11, 2012 when the sprinkler system was being opened, broken pipes and wires were found, which may have occurred prior to the closing of the system in September 2011 and caused the wasting of water. (T51-7 to 52-17; 56-6 to -9; 58-24 to 63-1). While no visual evidence of the broken pipes leaking water was noted by the Mr. Commerford in the form of muddy, soggy areas located on the Petitioner's property, both Mr. Commerford and Mr. Vicente acknowledged that the area where the Petitioner's home is located is a rocky area, which makes leaks difficult to find because the cracks and fissures of the rocks assist with the disbursement of waste water below the ground by being the path of least resistance. (T63-8 to 64-10; 129-17 to 130-25; 133-19 to 134-10). On May 13, 2013, leaks in the sprinkler system were found and water usage was found to be lower after repairs were made. (T121-11 to 127-20). Finally, when the water meter from Petitioner's residence was removed on April 6, 2012 (T80-13 to 81-9), it was tested and shown to be reporting in Petitioner's favor. (T82-13 to 83-11; 103-3 to 105-18; R-14; R-16; R-17). Therefore, the ALJ correctly determined that Petitioner was not entitled to an adjustment in accordance with N.J.A.C. 14:3-4.6.

Turning to Petitioner's spoliation of evidence claims, the record reflects that Respondent discarded meter #88417927 after testing showed that it was running slow. The record also shows that Respondent did not inform Petitioner that she could witness the meter test, as provided by N.J.A.C. 14:3-4.5(c). Notwithstanding Respondent's noncompliance with Board rules, Petitioner, as the customer of record, is responsible for the payment of all utility service provided. N.J.A.C. 14:3-7.1(a). However, the Board reminds United Water that it must comply with all rules and regulations. Respondent's failure to inform Petitioner of her opportunity to have the meter test witnessed by a third party does not void the March 2012 bill, particularly where there was no testimony or evidence presented or submitted to demonstrate that the meter test that was performed was inaccurate. (T14-14 to 15-5; 25-24 to 26-11; 45-19 to -25; 83-16 to 85-8; 116-3 to -9; R-16). In addition, while Petitioner contests the September 2012 bill, Petitioner testified that she was satisfied with the replacement meter, had not requested that it be tested, and presented no testimony or evidence that it was inaccurate. (T39-22 to 40-14).


While Petitioner claims that she could not have used the amount of water she was billed and that there was no leak on her premises (T9-4 to 11-15; 16-14 to 18-18), Respondent witnesses presented testimony that the meters were accurate and Petitioner failed to present any evidence which showed Respondent's billing or meters were inaccurate. (T14-21 to 15-5; 103-3 to 105-18). Therefore, the Board **FINDS** that Petitioner has not met her burden of proof.

Petitioner also asserted that there was a lack of "consistency" between meters. A utility is required to adjust charges to a customer whenever a meter is found to be operating at more than one and one half percent fast. N.J.A.C. 14:3-4.6(a). Here, Petitioner's meter tested as 98.3 percent accurate. (T103-21 to 105-18; R-16; R-17). Consequently, no adjustment of charges is required as a result, and N.J.A.C. 14:3-4.6(d) is inapplicable because there were no claims or evidence presented that the meter at issue had been tampered with. The meter had registered consumption and the circumstances were not such that the customer should reasonably have known that the bill did not reflect the actual usage. Based on this evidence, ALJ Moss concluded that Respondent had accurately calculated the Petitioner's usage during the disputed billing period. The Board **FINDS** this conclusion is supported by sufficient credible evidence in the record.


The Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be **DISMISSED**.

DATED: 5/21/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

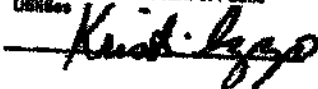

JOSEPH L. FIORDALISO
COMMISSIONER


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



ELAINE DUBELMAN, PETITIONER

V.

UNITED WATER NEW JERSEY, INC., RESPONDENT

BPU DOCKET NO. WC12060563U

OAL DOCKET NO. PUC 12139-12

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CASE MANAGEMENT

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 12139-12
AGENCY DKT. NO. WC12060563U

ELAINE DUBELMAN,
Petitioner,
v.
UNITED WATER NEW JERSEY, INC.,
Respondent.

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CASE MANAGEMENT
FORWARDING
2014 FEB 28 PM 10 14

Susan E. Schneier, Esq., for petitioner (Eddy & Associates)

John P. Wallace, Esq., for respondent, United Water New Jersey, Inc.

Record Closed: January 31, 2014

Decided: February 20, 2014

BEFORE **KIMBERLY A. MOSS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Elaine Dubelman (Dubelman or petitioner) filed a petition with the Board of Public Utilities (BPU) on July 6, 2012, regarding a billing dispute. Petitioner is disputing the amount of two water bills. The matter was transmitted to the Office of Administrative Law (OAL) and filed on September 6, 2012. On September 28, 2012, a prehearing conference was held. Several conferences have been held in this matter. On or about April 25, 2013, petitioner filed a motion to amend the petition to include bills from May

18, 2012, through August 31, 2012. The motion was granted on May 14, 2013. The hearing was scheduled for August 5, 2013. At that time petitioner stated that she would proceed through the use of affidavits. The respondent, United Water New Jersey (UWNJ) objected. I sustained the objection. Petitioner then requested an adjournment, which was granted. On August 12, 2013, petitioner filed a motion to re-open discovery to add a witness. UWNJ opposed the motion. The motion was granted on August 26, 2013. The hearing was held on December 10, 2013. Closing submissions were received on January 31, 2014, and I closed the record.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following uncontested **FACTS**:

Dubelman is a customer of UWNJ. She lives alone at 1 Laurel Drive, Englewood Cliffs, NJ. Her residence has a pool and a sprinkler system. The pool was installed in the 1960's. The sprinklers were installed in 1977. Petitioner is contesting two bills from UWNJ. One bill dated March 5, 2012, is for service from November 11, 2011, to January 13, 2012, in the amount of \$5,140.47. The other contested bill is dated September 18, 2012, for service from May 16, 2012, through September 6, 2012, in the amount of \$1,948.51. The meter was replaced on April 6, 2012. Dubelman is satisfied with the replacement meter that was installed on April 6, 2012. Dubelman was not informed that she could request that the meter test be witnessed by a representative of the BPU representative. The replacement meter was never tested.

TESTIMONY

Elaine Dubelman

Dubelman has not had any plumbing leaks or running toilets at her residence in the past ten years. There has been no water pooling in her yard. She contacted UWNJ because of the amount of the bills. In April 2012, UWNJ sent a field representative to her home to determine if she had a leak. No leak was found. Dubelman's plumber was present when UWNJ field representatives were trying to determine if there were leaks.

UWNJ removed the water meter to test it for accuracy at that time. She was later sent a letter telling her that the meter that had been tested was accurate. The water meter is in a pit on her property.

The bill dated March 5, 2012, represents an actual meter reading. Prior bills were based on estimated readings. Dubelman requested actual meter readings from UWNJ. The bill dated September 18, 2012, reflects readings from the replacement meter. In the spring and summer there is increased water consumption because the pool and sprinkler are in use. She is not aware of any leaks in the sprinkler system. She has noticed that water in the pool has been lower than it should be at the skimmers. Every year she noticed that the water was lower at the skimmers. An Oak tree fell onto her house during this time. A contractor did repairs to the damage caused by the tree.

James Commerford

James Commerford (Commerford) is the owner of Suburban Underground Sprinkler, Inc. He is a DEP-licensed irrigation inspector. His company has serviced Dubelman's sprinkler system since 1998. In September 2011, Dubelman's sprinkler system was closed. It was opened in May 2012. When closing the sprinkler the water source is shut off and water is evacuated with a compressor. During the last three years a broken line in the zone pipe was found on Dubelman's premises when the system was turned on. If the system is turned off, there is no water loss. Dubelman's system is on a timer. It runs four days a week for two hours each day. The system uses four thousand gallons of water per week.

There would be puddles or muddy areas if the system had a leak. On May 11, 2012, Suburban's technicians turned on Dubelman's system. At that time a broken wire was found under dead holly. In zone three and zone four a broken pipe was repaired. The broken pipes may have existed prior to the system being turned off. Water can be lost during the sprinklers run time because of two broken pipes. The area where Dubelman lives is a rocky area.

Commerford was on the premises on August 24, 2013. At that time he isolated the feed line, opened the valve, and did a static pressure test. The test showed no water movement in the meter. The sprinkler heads have not been replaced in the past three years.

Simone Reeves

Simone Reeves (Reeves) is a supervisor in consumer relations for UWNJ. She spoke to Dubelman in 2012 regarding a March 2012 bill. This conversation took place on April 17, 2012, after the meter had been removed. She spoke to Dubelman at other times as well.

There were a series of estimated readings on Dubelman's account. A pro-rated bill is a bill that is longer or shorter than the normal billing period. Dubelman had two estimated bills prior to the March 2012 actual bill. The two prior estimated bills were not an accurate reflection of Dubelman's water consumption during that time. Prior to the March 2012 bill the last actual water meter reading for Dubelman was done in May 2011. The March 2012 bill was a "catch-up" bill. Dubelman's meter was changed in April 2012. UWNJ is required to obtain one actual meter reading per year for quarterly customers.

Michael Allan

Michael Allan (Allan) is a customer service field representative for UWNJ. On April 6, 2012, he changed Dubelman's water meter and radio. He also installed a new water meter. The radio allows for UWNJ trucks to get remote meter readings. Allan transported the meter to the meter shop.

Ryan Gallagher

Ryan Gallagher (Gallagher) is the owner of Pure Pools. Pure Pools installs, services, maintains, and repairs swimming pools. He has a contractor's license. He has serviced Dubelman's pool for eight or nine years. Dubelman has a gunite in-ground

pool and spa. He opened and closed the pool for Dubelman in 2011. There has been a slight leak in the skimmers a few times. In 2011 the water level was two to three inches lower than it should have been. Pools can leak one inch of water per day. Dubelman never complained of leaks from the pool. Gallagher never noticed any indications that the pool had leaks, other than the issue with the skimmers. He did not know how much water was lost because of the skimmers problem; however, he later testified that one foot of water was lost due to the skimmers leak. He did weekly maintenance on the pool. During his weekly maintenance he did not notice a water leak. Dubelman's pool did not have an auto-fill device. The pool holds 20,000 gallons of water.

Harvey Culver

Harvey Culver (Culver) has worked as a meter tester for thirty-three years. A meter tester receives the meter and the work order for the meter test. He checks the meter number with the report. He tests the meter on the tester by running water through it and taking readings with three different tests. The tests on the meter taken from Dubelman's premises showed that the meter was running slow at 98.3. A slow-running meter benefits the client. Allan delivered the meter for testing. The meter is a one-inch meter.

Leonard Conticelli

Leonard Conticelli (Conticelli) is a customer service field representative for UWNJ. He installs meters and radio devices. He also removes meters. In spring 2013 he went to Dubelman's residence to determine if there were any water leaks. He also went to Dubelman's premises to go over the sprinkler zones with a representative from the sprinkler company. In June 2013, he again went to the property with supervisors from UWNJ. They walked around the property and went inside the house.

Ruben Moreira

Ruben Moreira (Moreira) is a supervisor of the meter department of UWNJ. He oversees meter changes and meter reading. He did a leak investigation at Dubelman's

home in 2012 and 2013. In 2012 he verified that there was no leak. In 2013 he verified that the meter was working and went inside Dubelman's home to determine if there were any leaks in the house. He walked around the property with a representative of the sprinkler company. He and the sprinkler representative noticed a leak in the last zone that the sprinkler representative repaired. Moreira went into the house and observed no evidence of leaks in the bathrooms. He has seen a residential premise use over one million gallons of water in a three-month period.

Antonio Vicente

Antonio Vicente (Vicente) is an operations engineer for UWNJ. He is presently on assignment to the meter department. On February 15, 2013, went to the Dubelman premises. A representative of Woody Plumbing was also at the Dubelman premises. It appeared to him that the bills were seasonally related. He returned to the premises with the irrigation contractor. At that time two small leaks were found near the shrubberies, which were repaired. The irrigation has plastic tubing. He was not advised of the two broken pipes that were previously repaired. Dubelman's water consumption was monitored on a weekly basis beginning in May 2013. The readings were higher in the summer. The period from June 7, 2013, thru June 25, 2013, showed consumption of 93CFF. Consumption was lower after June 25, 2013. Dubelman's property is on a rocky area. If there is a water leak, the water will be absorbed into the rock formation below the property. The pipes are on rocks.

Based on the testimony presented and the documentary evidence submitted, and having had an opportunity to observe the witnesses and to assess their credibility, I make the following **FINDINGS OF FACTS**:

Dubelman lived alone during the times in question. UWNJ sent representatives to Dubelman's property on more than one occasion to determine if there was a water leak. The two bills of August 19, 2011 and November 21, 2011 were estimated meter readings. Those estimated bills did not accurately reflect Dubelman's water consumption. Dubelman received a bill based on an actual meter reading on March 5, 2012. That March 5, 2012, bill was a "catch-up" bill.

On May 11, 2012, when the sprinkler system was being opened, two broken pipes and broken wire were found. The broken pipes may have existed prior to the sprinkler system being closed in September 2011. Dubelman has noticed that the water in the pool has been lower than it should be in the lower part of the skimmers. The pool holds 20,000 gallons of water.

The water meter was removed on April 6, 2012. It was taken to the meter shop to be tested. Dubelman was not told that she could have a BPU representative witness the meter test. The meter test showed that the meter was running at 98.3 percent. This means that the meter was running slow. When a meter is running slow the client is being billed less than the actual amount of consumption.

On May 13, 2013, leaks in the sprinkler system were found in the shrubbery. In 2013 a leak was found in the last zone of the sprinkler system. During period from June 7, 2013, thru June 25, 2013, meter showed consumption of 93CFF. After June 7, 2013, the consumption was lower.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:3-4.5(c) provides:

When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party.

In this case UWNJ admits that petitioner was not informed that she could have the meter test witnessed. However there was no testimony or evidence to show that the meter test that was performed in this matter was inaccurate.

N.J.A.C. 14:3-4.6 provides:

(a) Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

(b) If the date when the meter first became inaccurate is known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was in error at the time of the test, adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the total charges for metered service that accrued during the entire period that the meter was in error; and

3. The amount of the adjustment shall be the percentage determined under (b)(1) above, applied to the charges determined under (b)(2) above.

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was inaccurate at the time of the test adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the applicable time period as follows:

i. Determine the period of inaccuracy; that is, the period between the test that found the meter inaccuracy and the earlier of the events at (c)(2)(i)(1) or (2) below (Note: The period of inaccuracy may be longer than the time the meter has served the existing customer):

- (1) The most recent previous test of the meter; or
- (2) The date upon which the meter was taken out of service at the customer's premises;

ii. Perform the following calculation:

(1) If the period of inaccuracy determined under (c)(2)(i) is shorter than the maximum permitted time between meter tests, as determined under N.J.A.C. 14:5-3.2, 14:6-4.2, or 14:9-4.1(b), divide the period of inaccuracy in half; or

(2) If the period of inaccuracy is longer than the maximum permitted time between meter tests, divide the permitted maximum time between meter tests in half; then add the difference between the maximum permitted time between meter tests and the period of inaccuracy;

iii. If the time determined under (c)(2)(ii) above is longer than the time the meter has served the existing customer, the applicable time period is the time the meter has served the existing customer;

iv. If the time determined under (c)(2)(ii) above is shorter than the time the meter has served the existing customer, the applicable time period is the time determined under (c)(2)(ii) above;

3. Determine the total charges that accrued during the applicable time period determined under (c)(2) above; and

4. The amount of the adjustment shall be the percentage determined under (c)(1) above, applied to the charges determined under (c)(3) above.

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

1. The meter was tampered with, or other theft of the utility service has been proven;

2. The meter failed to register at all; or

3. The circumstances are such that the customer should reasonably have known that the bill did not reflect the actual usage.

(e) If a meter is found to be registering less than 100 percent of the service provided because of theft or tampering under (d)(1) above, the utility may require immediate payment of the amount the customer was undercharged.

(f) In cases of a charge to a customer's account under (d)(2) or (3) above, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was undercharged.

In this case the meter that was used to calculate the March 5, 2012, bill was not fast. It was slow. The meter tests showed that the meter ran at 98.3 percent. When a meter runs slow, the customer is being under-billed. There were two broken pipes in zone three and four of the sprinkler system on May 11, 2012. These broken pipes may have existed prior to the sprinkler system being closed the previous fall. The water level at the skimmers in the pool was below its normal level. Since the meter was not running fast Dubelman is not entitled to an adjustment.

Petitioner also contests a bill dated September 18, 2013. The meter that measured the consumption for this bill was installed on April 6, 2012. Petitioner testified that she was satisfied with this meter. She did not request that this meter be tested. In addition there was no testimony or evidence that the new meter was not accurate.

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that she was improperly billed by UWNJ.

ORDER

It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

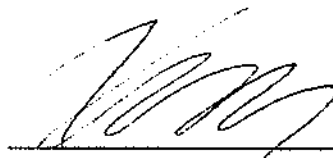
I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

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.

2-20-14

DATE



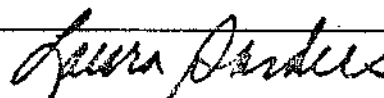
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Date Mailed to Parties:

FEB 24 2014

ljb



DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

WITNESSES

For Petitioner:

James Commerford
Ryan Gallagher

For Respondent:

Simone Reeves
Michael Allan
Harvey Culver
Leonard Conticelli
Ruben Moreira
Antonio Vicente

EXHIBITS

For Petitioner:

- P-1 UWNJ bill dated March 5, 2012
- P-2 UWNJ bill dated November 18, 2012
- P-3 Interrogatory Questions 10-23 propounded on respondent by petitioner
- P-4 Interrogatory Answers 10-23 of respondent

For Respondent:

- R-1 UWNJ bill dated August 19, 2011
- R-2 UWNJ bill dated November 21, 2011
- R-3 UWNJ bill dated August 21, 2013
- R-4 UWNJ bill dated November 18, 2013
- R-5 Photo of Dubelman's home
- R-6 Photo of pit area on Dubelman's property
- R-7 Photo of Dubelman's home from the street
- R-8 Photo of the front of Dubelman's house
- R-9 Invoice from Suburban Underground Sprinklers dated October 10, 2012

- R-10 Invoice from Suburban Underground Sprinklers dated May 16, 2012
- R-11 Invoice from Suburban Underground Sprinklers dated June 1, 2011
- R-12 Invoice from Suburban Underground Sprinklers dated November 17, 2011
- R-13 Consumption history of Dubelman from February 28, 1996, to August 18, 2011
- R-14 United Water field order dated April 5, 2012
- R-15 Affidavit of Ryan Gallagher dated August 3, 2013
- R-16 Weights and Measures Certifications dated September 15, 2010, and September 16, 2010
- R-17 Meter Test Report dated April 10, 2012
- R-18 UWNJ summary spread sheet