



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

CONGREGATION OF YETEV LEV,)	ORDER ADOPTING INITIAL
Petitioner,)	DECISION IN PART AND
)	MODIFYING IN PART
v.)	
)	
NEW JERSEY AMERICAN WATER COMPANY,)	BPU DOCKET NO. WC08060418U
Respondent.)	OAL DOCKET NO. PUC 6417-08

(SERVICE LIST ATTACHED)

BY THE BOARD¹

The Congregation of Yetev Lev ("Petitioner") filed a petition on June 18, 2008, alleging an improper shut-off of water service on April 10, 2008; requesting a credit for the reconnection fee associated with that shut-off; requesting a credit for an overcharge of 156,000 gallons in sewer service beyond the water usage in the year 2006; requesting an investigation into the delayed response to Petitioner's requests for an actual meter reading in 2005; and demanding an investigation to reveal the formula for calculating estimated bills. Upon receipt of New Jersey American Water Company's ("Respondent's") Answer on July 29, 2008, the Board of Public Utilities ("Board") transmitted this matter to the Office of Administrative Law ("OAL") for hearing 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 case was assigned to Administrative Law Judge ("ALJ") Douglas Hurd, who held a hearing on January 26, 2009. ALJ Hurd submitted his Initial Decision in this matter to the Board on February 2, 2009. Petitioner submitted written exceptions dated February 13, 2009. Respondent replied to Petitioner's exceptions with a letter brief dated February 20, 2009. Petitioner then submitted a written response dated February 24, 2009. Pursuant to N.J.A.C. 1:1-18.8, the Board requested and the OAL granted an extension until May 4, 2009 in order to review the exceptions and issue a final decision.

¹ Commissioner Frederick Butler did not participate in this matter.

INITIAL DECISION

ALJ Hurd's Initial Decision explains that Petitioner modified its petition in order to reduce the number of disputed issues. (Initial Decision, at 2.) The issues that remained were: (1) the allegation that Respondent over-billed Petitioner's sewer usage by 156,000 gallons in 2006 and (2) the allegation that Respondent improperly shut-off Petitioner's water supply on April 10, 2008. (Ibid.) These two issues were addressed at the hearing and are discussed in the Initial Decision.

The Initial Decision primarily focuses on Petitioner's over-billing claim. Petitioner disputes charges for 156,000 gallons, at a total charge of \$925.00. (Ibid.) At the hearing, Respondent entered into evidence a copy of its current Board-approved tariff.² (Initial Decision, at 3.) ALJ Hurd found that the tariff contained the "methodology for charging for sewer usage" in Lakewood, New Jersey. (Ibid.) The sewer usage charges for April to December of a given year are based on the average of the actual water usage for the winter quarter: January to March. (Ibid.) The Initial Decision provides a summary of the testimony of Respondent's expert, who explained how the tariff was applied to Petitioner and how Petitioner's sewer rate was calculated for the remainder of 2006. (Ibid.) The Initial Decision also explains Petitioner's position that "the water use calculated from January through March 2006 (which forms the basis for the sewer billing for the rest of the year) was inflated." (Initial Decision, at 4.) In particular, Petitioner "did not like the fact that he paid more for sewer than for water in 2006." (Ibid.) ALJ Hurd reviewed the documentary evidence and considered the testimony at the hearing. (Ibid.) Upon review of the evidence, ALJ Hurd concluded that Respondent billed Petitioner in accord with its Board-approved tariff and the applicable regulations. (Ibid.)

ALJ Hurd also reviewed Petitioner's claim of an improper shut-off on April 10, 2008. (Initial Decision, at 2.) ALJ Hurd found that the parties did not dispute that: (1) the water was shut-off for a few hours; (2) Petitioner was credited the reconnection fee; and (3) Petitioner suffered "no monetary loss." (Ibid.) In light of the foregoing, ALJ Hurd concluded that there was no disputed issue. (Ibid.) Petitioner also requested "an investigation as to why the petitioner's water was shut-off on April 10, 2008." (Ibid.) Referencing the foregoing facts and citing a lack of jurisdiction to conduct such an investigation, ALJ Hurd found no issue to be addressed. (Ibid.)

Therefore, ALJ Hurd ordered the petition dismissed. (Initial Decision 4.) ALJ Hurd also ordered the payment of \$925.00 to Respondent, which equates to the 156,000 gallons in dispute. Ibid. The Initial Decision was filed with the Board for consideration along with Petitioner's exceptions and Respondent's reply. Ibid.

EXCEPTIONS TO THE INITIAL DECISION

Petitioner's exceptions state that the "initial decision did not address the basis of the dispute," which Petitioner identifies as Respondent's failure to take an actual reading in December 2005. (Exceptions, at 1, Feb. 13, 2009.) Petitioner references Respondent's Board-approved tariff and N.J.A.C. 14:3-7.2 to support its position that estimated bills resulted in over-billing. (Ibid.) Petitioner argues that its meter is readily accessible from the street and that materials placed in evidence by Respondent show that only two actual meter readings took place in 2005.

² ALJ Hurd noted that neither party disputed that the methodology listed in the tariff is currently the same as it was in 2006. (Initial Decision, at 3.) The Board's Division of Water has confirmed that as fact.

(Exceptions, at 2.) Petitioner also states that a meter reading was requested on December 19, 2005, but was “delayed more than once until Jan. 4, ’06.” (*Ibid.*) In sum, Petitioner appears to contend that Respondent’s unreasonable, estimated billing practice resulted in over-billing that is contrary to the Board-approved tariff and in violation of the Board’s regulation.

Respondent’s reply urges the Board to reject Petitioner’s exceptions and affirm the Initial Decision without modification. (Reply, at 2.) The reply, like the Initial Decision, summarizes the methodology for calculating sewer charges in Lakewood, New Jersey. (*Ibid.*) The reply states that “[n]o estimates were used in calculating Petitioner’s April through December 2006 Sewer Usage Charge.” (Reply, at 3.) Respondent clarifies that “[a]ny delay in performing an actual meter read in December 2005 was rectified when [Respondent] took an actual read on January 4, 2006 and billed Petitioner based on ACTUAL water usage.” (*Ibid.*) Respondent notes that “Petitioner’s contested Sewer Usage Charge for 2006 was actually less than what was billed for the same period in 2005.” (*Ibid.*) Respondent also explains that, given the methodology used in Lakewood, “a customer’s actual water usage throughout any given year may be higher or lower than the Sewer Usage Charge.” (*Ibid.*) Respondent contends the methodology works both ways: Respondent may not recover costs when a customer’s actual usage exceeds the charge and customers cannot receive credits for “select years when its Sewer Usage Charge exceeds actual usage.” (Reply, at 4.) Nonetheless, Respondent concludes with references to the credits it has provided Petitioner in an effort to settle the dispute. (*Ibid.*)

Petitioner responded to the Reply with additional exceptions. Petitioner reiterated the allegations contained in its petition and provided a longer excerpt of the Board’s regulation. (Exceptions, at 1, Feb. 24, 2009.) Petitioner also argued that its actual water usage was only 154,000 gallons for the winter quarter, which should have resulted in sewer charges of only 51,333 gallons for April to December 2006. (Exceptions, at 2.) Petitioner clarified that “four individual charges” remain in dispute. (*Ibid.*) Those charges are: (1) the sewer charge for January 2006; (2) the double-billing for January 2006; (3) the sewer overcharge for April to December 2006; and (4) the reconnection fees associated with the April 10, 2008 shut off. (*Ibid.*) Petitioner acknowledges receipt of credits from Respondent, but states that it is “not satisfied with the credits given.” (*Ibid.*)

DISCUSSION AND FINDINGS

Petitioner’s exceptions reference the claims from the petition. Although the Initial Decision states that Petitioner clarified its petition at the hearing, (Initial Decision, at 2), and it seems that both parties agreed to limit the issues, (Hr’g Tr. 5-6, 22-23, 60-61, Jan. 26, 2009), the issues raised in the petition were addressed at the hearing on January 26, 2009. Included in the discussion of the two issues ALJ Hurd identified were Petitioner’s concerns about the delayed actual meter reading as well as its concerns about Respondent’s estimated billing practices. (Hr’g Tr. 30-35; 47-54.) Upon review of the record below, the Initial Decision, and the written exceptions, the Board HEREBY FINDS that the issues raised in the petition were fully addressed at the hearing and discussed in the Initial Decision.

Petitioner’s exceptions claim that Respondent used unreasonable, estimated billing practices to overcharge its account contrary to a Board-approved tariff. Respondent’s expert testified that the January 2006 charge was based on a per-day usage and not an estimate. (Hr’g Tr. 15-18, 42-43, Jan. 26, 2009.) In addition, Respondent’s expert testified that the 2005 sewer charge was not used to calculate the charge for the per-day usage. (Hr’g Tr. 45.) Petitioner’s testimony largely restated the allegations set forth in the petition and now stated in its exceptions. (Hr’g Tr. 30-33.) In particular, Petitioner argued in testimony and exceptions to the

Initial Decision that its December 2005 request for an actual meter reading was “delayed more than once until January 4, 2006.” (Exceptions, 2, Feb. 13, 2009; Hr’g Tr. 47-48.) Petitioner also argued that its actual water usage was only 154,000 gallons for the winter quarter. (Exceptions, 2, Feb. 24, 2009; Hr’g Tr. 53-54, 69-70; Ex. P-2.) ALJ Hurd found that Respondent’s testimony “was persuasive and demonstrated that [Respondent] billed petitioner properly.” (Initial Decision, at 4.) The Board HEREBY FINDS that Petitioner’s claim that Respondent used unreasonable, estimated billing practices to overcharge its account was addressed at the hearing and discussed in the Initial Decision. The Board FURTHER FINDS that ALJ Hurd considered the documentary evidence as well as the testimony. Therefore, the Board FURTHER FINDS that Petitioner was charged in accord with the tariff.


Petitioner’s exceptions also dispute the reconnection fee associated with the shut-off on April 10, 2008. At the hearing, the parties agreed that Petitioner was credited for the shut off and that the matter was resolved “in a financial sense.” (Hr’g Tr. 60-61.) ALJ Hurd concluded that there was no disputed issue and dismissed the claim. (Initial Decision, at 2, 4.) In light of the foregoing, the Board FURTHER FINDS that the dispute was fully resolved.

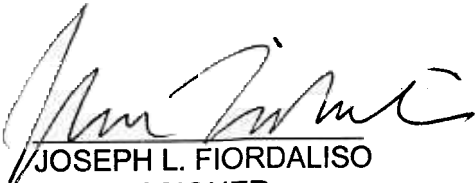
The Initial Decision and exceptions indicate that Petitioner requested “an investigation as to why the petitioner’s water was shut-off on April 10, 2008.” (Exceptions, at 1; Initial Decision, at 2.) The ALJ denied this request, in part, on the inability of the ALJ to order that relief. (Initial Decision, at 2.) To the extent that the ALJ considered this request, the ALJ denied it, based on the facts presented at the hearing. (Hr’g Tr. 61; Initial Decision, at 2.) In short, the ALJ found that the matter was resolved. (Hr’g Tr. 61.) That portion of the Initial Decision that includes ALJ Hurd’s discussion as to the jurisdiction to conduct an investigation of the water shut-off, however, is in error. (Initial Decision, at 2.) The Uniform Administrative Procedure Rules state that an ALJ “may render any ruling or order necessary to decide any matter presented to him . . . which is within the jurisdiction of the transmitting agency.” N.J.A.C. 1:1-14.6(h). The Board is granted broad jurisdiction over public utilities, N.J.S.A. 48:2-13, and specifically granted the authority to “[i]nvestigate upon its own initiative or upon complaint in writing any matter concerning any public utility,” N.J.S.A. 48:2-19a. Thus, because the Board has the ability, when appropriate, to direct an investigation as requested by the Petitioner, the ALJ also has that ability. To clarify the misstatement in the Initial Decision, the Board HEREBY MODIFIES the Initial Decision in part to state that the Board, and by extension the ALJ, has jurisdiction to investigate a complaint regarding a public utility, like Respondent. Notwithstanding the Board’s authority to do so, the Board HEREBY FINDS that an investigation into the water shut-off was unnecessary in this case, based upon the uncontroverted evidence that the water was shut-off for only a few hours, Petitioner was credited the reconnection fee; and Petitioner suffered “no monetary loss.” Whatever harm may still exist, if any, does not necessitate an investigation of the nature requested by Petitioner.

In light of the foregoing, the Board HEREBY ADOPTS the Initial Decision in part and HEREBY MODIFIES the Initial Decision in part to clarify the Board's jurisdiction.


DATED: 4/27/09

BOARD OF PUBLIC UTILITIES
BY:

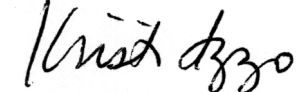

JEANNE M. FOX
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

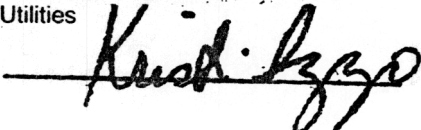

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
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


KRISTI IZZO

CONGREGATION YETEV LEV

v.

NEW JERSEY AMERICAN WATER COMPANY

**BPU DOCKET NO. WC08060418U
OAL DOCKET NO. PUC 6417-08**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

INITIAL DECISION

OAL DKT. NO. PUC 6417-08

AGENCY DKT. NO. WC08060418U

CONGREGATION YETEV LEV,

Petitioner,

v.

**NEW JERSEY AMERICAN WATER
COMPANY,**

Respondent.

Zalmen Rottenberg, petitioner, pro se

Stacy A. Mitchell, Esq., for respondent (Conen O'Connor, attorneys)

Record Closed: January 26, 2009

Decided: February 2, 2009

BEFORE DOUGLAS H. HURD, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner in this matter is Congregation Yetev Lev, a synagogue located in Lakewood. Petitioner filed a petition for a formal hearing, dated June 2, 2008. The petition was received by the Board of Public Utilities on June 18, 2008. The detailed petition claims, among other items, that New Jersey American Water ("NJAW") billed petitioner for excess sewer usage.

Respondent, NJAW filed its response to the petition by letter dated July 24 2008. NJAW explains that its sewer charge billing to petitioner was done in accordance with its Board-approved tariff rates. The Board of Public Utilities transferred the matter to the Office of Administrative Law, where it was filed on August 14 2008. A hearing was held on January 26, 2009. Appearing on behalf of petitioner was Zalmer Rottenberg. He is in charge of the water/sewer account for the petitioner and authorized on its behalf to appear at the hearing.

Prior to the hearing beginning Rottenberg clarified the issues he was seeking to have addressed. First, he was claiming that NJAW overbilled petitioner during 2006 for its sewer usage by 156,000 gallons. This translates into a charge of \$925.

Second, petitioner claims that NJAW improperly shut-off its water supply on April 10 2008. Both parties agree that the water was shut-off for a matter of hours, and that petitioner was credited with the amount it had to pay for a reconnection fee. There was no monetary loss to petitioner. Petitioner stated at the hearing that he wanted an investigation as to why the petitioner's water was shut-off on April 10 2008. Since I do not have jurisdiction to conduct such an investigation and because petitioner suffered no monetary loss from the shutting down of the water, I advised the parties that there were no issues for me to address regarding the water shut-off.

ISSUE

Did NJAW bill petitioner in accordance with its tariff and regulations for sewer usage in 2006?

ANALYSIS

NJAW relied upon the testimony of Lisa Attanasio, service delivery specialist, and documents R-1 through R-4. Petitioner relied upon the testimony of Rottenberg and documents P-1 through P-3.

NJAW's methodology for charging for sewer usage is provided in its Board-approved tariff. For the Lakewood service area, the tariff is listed in R-1. Although this document states it is effective February 14, 2008, there is no dispute that the methodology listed is the same as it was for 2006. The tariff provides as follows:

The volume of sewer use is assumed to equal water meter registration. Monthly sewer usage charges shall be determined based upon winter quarter consumption. Winter quarter consumption shall be determined based on an initial water meter reading taken in December of one year with the concluding meter reading taken approximately 90 days thereafter in March of the following year.

The April through December sewer volume charges are based on the total water volume usage for the months of January, February and March. Sewer water volume charges are based upon actual water usage volume for January, February and March. R-1.

Attanasio, with the aide of R-3, detailed how NJAW billed petitioner for the 2006 sewer usage. She explained that the billing was done in accordance with the stated tariff, and how the average 75 units for April through December 2006 was calculated. She also testified that petitioner was provided good faith credits totaling 45,000 gallons. These credits came off the 201,000 gallons that petitioner was disputing, leaving a dispute over the remaining 156,000 gallons. Petitioner agrees that he was in fact provided a credit for 45,000 gallons.

Rottenberg provided a detailed explanation of petitioner's claim. His case was consistent with the claims spelled out in the detailed petition filed with the Board of Public Utilities. In summary, petitioner claims it is unfair that his sewer bill for 2006 was

higher than for the water bill. Rottenberg claims it is impossible to use more sewer than water, and that typically there is less sewer usage than water usage when you take into account landscaping and similar activities. He contends that the water use calculated for January through March 2006 (which forms the basis for the sewer billing for the rest of the year) was inflated.

Having considered the parties arguments, the documentary evidence and the testimony of the witnesses, I conclude that NJAW billed petitioner in accordance with its Board-approved tariff and regulations. The testimony by Attanasio was persuasive and demonstrated that NJAW billed petitioner properly. Rottenberg did not like the fact that he paid more for sewer than for water in 2006, but the fact is that it was done in accordance with the tariff. Furthermore, the evidence showed that in 2007 he was billed significantly less for sewer than for water. This indicates that the tariff methodology sometimes may lead to a different result each year based on the actual water usage for the winter months.

Whether the methodology is fair is not the question before me. The question is whether the methodology in the tariff was followed. After a careful review of the evidence, I conclude that NJAW did in fact follow the Board approved tariff and regulations.

ORDER

Based on the foregoing, I hereby **ORDER** that petitioner's petition be **DISMISSED**. Petitioner is **ORDERED** to remit payment to NJAW for \$925, which equals the 156,000 gallons he was billed for in 2006.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

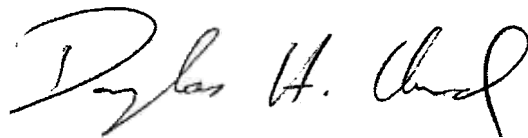
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

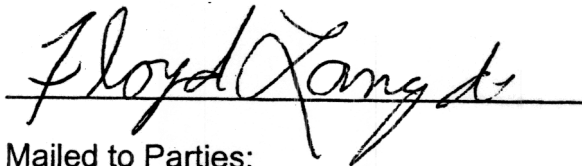
2-2-09

DATE

Date Received at Agency: 2-2-09



DOUGLAS H. HURD,, ALJ


Mailed to Parties:

DATE

/lam

OFFICE OF ADMINISTRATIVE LAW

WITNESSES

For petitioner:

Zalmen Rottenberg, representative from petitioner

For respondent:

Lisa Attanasio, Service Delivery Specialist

EXHIBITS

For petitioner:

Tariff

P-2 Rottenberg letter, with attachments

P-3 NJAW Contact Information regarding petitioner

For respondent:

Tariff

N.J.A.C. 4:3-7.2

Letter from Hoffman dated June 22, 2006

Usage Information Repot