



Agenda Date: 8/21/13  
Agenda Item: 7B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9th Floor  
Post Office Box 350  
Trenton, New Jersey 08628-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

SING SING HAN BREWERY, LLC	)	ORDER ADOPTING
Petitioner	)	INITIAL DECISION
	)	
v.	)	
	)	
AQUA NEW JERSEY, INC.	)	BPU DOCKET NO. WC12050467U
Respondent	)	OAL DOCKET NO. PUC 12151-12

**Parties of Record:**

**John C. Limm** appearing on behalf of petitioner (**Sing Sing Han Brewery, L.L.C.**)  
**Stephen Genzer Esq. and Edward Roslak Esq.**, appearing on behalf of respondent (**Aqua New Jersey, Inc.**)

**BY THE BOARD:**

This matter involves a billing dispute initiated by Sing Sing Han Brewery, L.L.C. ("Petitioner") against Aqua New Jersey, Inc. ("Respondent"). Petitioner asserts the meter for water service was faulty and that Respondent incorrectly billed Petitioner based on readings from the faulty meter. For the reasons noted herein, the Board of Public Utilities ("Board") dismisses the petition.

**BACKGROUND**

On May 30, 2012, Petitioner filed a petition with the Board disputing a \$900.66 water bill. Petitioner asserted that its bill was inaccurate because it showed significant water usage even though the building was unoccupied. On August 3, 2012, Respondent filed an answer denying the bills for Petitioner were inaccurate. On August 31, 2012, the Board transmitted the matter to the Office of Administrative Law ("OAL") 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. Administrative Law Judge ("ALJ") Ronald W. Reba heard the case on February 6, 2013.

At the evidentiary hearing, John Limm, the owner of Sing Sing Han Brewery, testified on the Petitioner's behalf. Limm stated he began leasing the building, where the meter was located, on July 14, 2011. Limm testified that, although the first two month's bills were low (\$16.63 and

\$40.92), Petitioner's October bill suddenly increased to \$367.06. Petitioner paid the bills for the months up to September 2011 and refused to pay for subsequent months claiming they were in error. Petitioner argued the building is currently unoccupied and there is no reason for the meter reading to have been so high. In November 2011, Limm complained to Respondent and asked to have Petitioner's meter tested. Limm testified that he did not inspect the plumbing of the building prior to taking over the lease nor when he requested for the water to be turned on. (T175-18 to T176-8). (T166-1 to 7). Limm also testified that he had not informed the landlord of the leaky toilet, because he wanted to resolve his billing dispute with Respondent first.

John Hildebrant, Manager of Operations, and Bill Hiles, a Field Service Representative, testified on behalf of Respondent. Hildebrant testified that Respondent's business records show that, when Petitioner's service was first turned on, the meter was spinning even though the water valve was in the off position. Hildebrant testified that Respondent's records show Respondent informed Petitioner water was running on the property. Hildebrant also stated that the records indicate that Limm was informed of a possible leak on December 6, 2011. On that same day, Hiles visited Petitioner's property to exchange the meter. Hiles testified that after he replaced the meter, he noticed the new meter's leak detector was moving. Hiles testified he showed Limm that a leak was still present and that the two of them went inside the property to check for leaks. Hiles stated that inside he could hear a toilet leaking in the bathroom from ten feet away. He testified that he removed the lid of the tank and found a plastic bag draped over the top of the mechanism. Hiles estimated that the leak was causing two to three gallons of water per minute to be lost through the toilet.

On December 14, 2011, Hiles tested the meter. The results of the meter test showed that the meter was within .5 percent of 100 percent accuracy. On December 24, 2011, Petitioner's water service was turned off for nonpayment.

Following conclusion of the hearing, ALJ Reba left the record open for thirty days to allow the parties to make further submissions to the record and an additional seven days to allow the parties to submit anything in writing on those submissions. On March 7, 2013, Respondent submitted a record of the meter originally installed at Petitioner's address and a brief arguing for dismissal of Petitioner's complaint. ALJ Reba closed the record on May 24, 2013.

On July 5, 2013, ALJ Reba issued an initial decision. Based on the record and the testimony provided by the parties, ALJ Reba found that "nothing in the record evidences that the original water meter at the premises was faulty." (Initial Decision at 8). ALJ Reba noted that Petitioner acknowledged there was a leaky toilet and that the meter test showed the meter was accurate. ALJ Reba also noted that Petitioner was informed by Respondent that there was a possible leak in the building. ALJ Reba found Petitioner failed to provide any credible evidence that the high water bills were the result of anything other than the leaky toilet. As a result of these findings, and treating Respondent's post-hearing brief as a motion for dismissal, ALJ Reba concluded that Petitioner failed to prove its water bills were inaccurate and dismissed the petition.

### **DISCUSSION AND FINDING**

Petitioners bear the burden of proof in this matter by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Petitioner argues that its original meter was faulty because its bills were lower following replacement of the meter even though the leaky toilet was never repaired. Respondent contends the lower bills are a result of a shorter billing period, because Petitioner's service was turned off on December 24, 2012. "A water meter shall be considered accurate if it shows an error no greater than one and one half

percent, when tested in accordance with this section." N.J.A.C. 14:9-4.1(d). The Board gives great weight to tests that measure meters' accuracy. See Kohli v. Jersey Central Power and Light Co., Dkt. No. EC10070506U, final decision, (May 16, 2011).

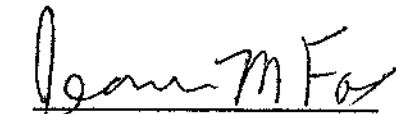
In this case, Petitioner's meter tested within .5 percent of accuracy. At the evidentiary hearing, Petitioner acknowledged that a toilet on the property leaked, but insisted that the meter was to blame for the high bills. Respondent presented the results of a meter test which showed the meter was operating with the zone of accuracy accepted by the Board and also presented evidence showing Petitioner had been informed of a possible leak as early as July 14, 2011. Based on the record set forth and the great weight given to meter tests, Petitioner has failed to establish that an inaccurate meter is the result of its high water bills. Rather the high water usage by an unoccupied property appears to be the result of an internal leak.


Therefore, upon careful review and consideration of the record, the Board **HEREBY FINDS** that the ALJ Reba reasonably concluded based upon sufficient, competent and credible evidence that: (1) there is nothing in the record that evidences that the original water meter at the premises was faulty; (2) accurate readings of the meter were taken by Respondent's personnel; (3) the meter was tested by Respondent and the accuracy of the meter according to N.J.A.C. 14:9-4.1(d) was established; and (4) Petitioner acknowledged that there had been a leaky toilet on the premises. The Board **HEREBY ADOPTS** the Initial Decision in its entirety and **HEREBY ORDERS** that the petition be **DISMISSED**.

DATED: 8/21/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

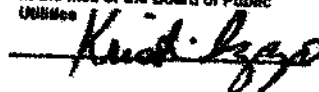
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
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



SING SING HAN BREWERY, LLC

V.

AQUA NEW JERSEY, INC.

BPU DOCKET NO. WC12050467U

OAL DOCKET NO. PUC12151-12

SERVICE LIST

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JUL 10 2013

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STATE OF NEW JERSEY  
OFFICE OF ADMINISTRATIVE LAW

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

CASE FILED

**INITIAL DECISION**

OAL DKT. NO. PUC 12151-12

AGENCY DKT. NO. WC12050467U

**SING SING HAN BREWERY, LLC,**

Petitioner,

v.

**AQUA NEW JERSEY, INC.,**

Respondent.

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John Limm, petitioner, pro se

Stephen Genzer, Esq., and Edward Roslak, Esq., for respondent (Saul Ewing  
LLP, attorneys)

Record Closed: May 24, 2013

Decided: July 5, 2013

BEFORE RONALD W. REBA, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner Sing Sing Han Brewery, LLC, requested a hearing to contest the amount of the water bills sent by respondent Aqua New Jersey, Inc., to the petitioner for the months of October 2011 through December 2011 on the basis that either the water meter was defective or there was an improper reading of the water meter. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on

September 6, 2012. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. I heard the matter on February 6, 2013, and kept the record open for submission of further documentation and briefs by the parties, and for review of the transcript of the proceeding. The record closed on May 24, 2013.

### ISSUE

The issue in this matter is whether there was a defective water meter at Sing Sing Han Brewery, or, if the meter was not defective, whether the meter was misread by respondent's personnel.

### TESTIMONY

#### John Hildabrant

Mr. Hildabrant is employed by Aqua New Jersey as the manager of operations, and has been with the company seven years. He holds a certified waste water treatment license as well as a water distribution license from the New Jersey Department of Environmental Protection. He is responsible for the day-to-day operations of all functions of the company, including water-meter reading, customer service, production, pumping of water, repairs, and overseeing the Aqua field representatives. He stated that there are approximately fifteen Aqua field representatives who handle customer inquiries, perform meter exchanges, turn customers' water on and off at their request, and perform other duties as needed.

With regard to customer billing, Mr. Hildabrant testified that as water flows through the company's meter at the customer's property, the meter reads how much water is being used by the customer, and the customer is billed accordingly. The higher the meter reading, the higher the bill. He stated that the company has no idea how much water the customer is using, or when the customer is using that water. Bills are generated monthly and payment is expected upon receipt.

Mr. Hildabrant testified that Sing Sing Han Brewery is delinquent in the amount of \$900.66 as a result of not paying the Aqua bills that were generated from September through December 2011. The water has been shut off at the premises due to non-payment. Mr. Hildabrant's records indicated that at least three different field representatives had made visits to the premises at different times. The first visit was when the water was turned on, pursuant to a work order dated July 14, 2011, at which time the owner was told that there was water running somewhere. In November 2011, before the water was shut off, field representative Bill Hassen went to the brewery in response to a complaint from the owner of the brewery, John Limm. Upon arriving at the premises, Mr. Hassen saw that the water meter was spinning, which indicated that water was being used. Mr. Hassen notified Mr. Limm that there was water running somewhere in the building. On December 6, 2011, Mr. Limm visited the offices of Aqua and discussed the water-meter readings, and said that he wanted the water meter tested. On that same day, Bill Hiles, a field representative, went to the premises. Mr. Hiles discovered that one of the toilets in the building had a plastic bag under the lid, which had been put there to avoid water splashing on the wall and which was preventing the toilet from working properly. Mr. Limm insisted that the original meter be tested, so the meter was replaced, and the original meter was taken to the company's offices for testing.

The testing of the original meter was done on December 14, 2011. Aqua performed three tests, at three different flow rates: low, intermediate, and full. The results of those tests were within 1.5 percent of 100 percent accuracy, which, Mr. Hildabrant testified, indicated that the meter had been working correctly, according to public utilities regulations.

On cross-examination, the petitioner asked Mr. Hildabrant whether the meter had been tested prior to him taking over the building, which had been vacant for some time. Mr. Hildabrant said that he did not know when it had been tested, but indicated that pursuant to regulations, it must be taken out and tested every ten years.

On March 7, 2013, pursuant to a request made by this judge at the hearing, respondent submitted a Meter History Record, which indicated that a meter had been placed at the premises now occupied by Sing Sing Han Brewery in 2005, and, at petitioner's request, on December 6, 2011, that meter was removed and replaced. Mr. Hildabrant testified that the meter installed in 2005 would have been tested for accuracy by the manufacturer, and possibly also by the company, before it was installed. The petitioner asked why after the meter was replaced the new meter only showed usage of 500 gallons for a thirty-four-day period, as opposed to much higher gallons-per-month readings in the months prior to the meter being replaced. Mr. Hildabrant answered that there was consumption beyond the meter that registered on the old meter, and that the situation beyond the meter that had caused the high readings, before the meter was replaced, had changed. The witness stated that what he has observed in his seven years at the company is that when a complaint comes in about high water-meter readings, it is likely that a toilet is running at the premises, that is, there is water running into the toilet's overflow tube. If such a leak is not corrected, as much as two to four gallons of water a minute can leak, resulting in high water bills to the customer. The field representative who had responded to Mr. Limm's request to have the meter replaced found that a toilet in the building was leaking, which in his mind was likely the source of the high water-consumption readings.

Mr. Hildabrant stated that it was Mr. Limm who called to have the water turned on in July 2011 when he took over the building. The meter was not tested at that time, as they are only tested every ten years, unless testing is required due to a customer complaint, which is what occurred with Sing Sing Han Brewery in late 2011. The documentation provided by the respondent after the hearing indicated that no problems with the water meter had been detected or complained of prior to Mr. Limm's occupancy of the premises. Also, the meter that Mr. Limm insisted be removed was installed in another office on February 27, 2012, and the records show no complaints or registering of high levels of usage at that new location. Mr. Hildabrant also testified, upon questioning from this judge, that most complaints about meters allege that the meter is reading too quickly, and therefore generating a higher water bill. When such a complaint is made, the company tests the meter using the water-flow procedure, and



they typically find that it is a problem inside or outside of the building, like a running toilet or a leaky pipe, that is causing the increased water usage. When a meter is truly not operating correctly, it typically will run slow, and the customer gets a smaller bill than is actually warranted. The company only learns of a water meter running slow when the ten-year test is performed, and if the customer has been undercharged, the company does not send an amended bill.

Mr. Hildabrant testified that both the meter that was taken out and the replacement meter at Sing Sing Han Brewery were operating correctly and registering accurately, and that Mr. Limm's usage complaints had to have some other source, probably the leaking toilet.

#### Bill Hiles

Mr. Hiles testified that he is a field service representative for Aqua New Jersey, Central Division, and has been employed by Aqua for approximately twenty-seven years. He was sent to Sing Sing Han Brewery on December 6, 2011, to speak with Mr. Limm and to check the meter at the premises. When he looked at the meter, he noticed that the leak detector on the meter was indicating a leak. He told Mr. Limm that there was a leak at the meter, rather in the building, and that is why the bill was high. He removed that meter and installed a new one. Mr. Hiles then noticed that the new meter's leak detector was also indicating a leak. At that point he and Mr. Limm went upstairs in the building, and he could hear a toilet leaking from ten feet away. When he went into the bathroom and removed the lid of the toilet he saw that a Walmart plastic bag was draped over the mechanism inside the toilet. He could see that the fill valve was defective, and a bag had been put over the mechanism to prevent water from shooting out. Mr. Limm was standing right next to him when he removed the toilet lid, and he informed Mr. Limm about the leak at the toilet. He advised Mr. Limm to have the leak fixed, and told him that he was shutting off the water at the meter valve so as not to waste any more water. Mr. Hiles testified that running water in a toilet could use two to three gallons of water a minute, which amounts to the loss of thousands of

gallons of water each day. So over the course of thirty days, it is possible that 86,400 gallons of water could have been used due to the leak at the toilet.

Mr. Hiles testified that on December 14, 2011, he performed the testing on the meter that was removed from the Sing Sing Han Brewery premises. He said that he always invites the customer to witness the testing, and that he told Mr. Limm that he could come down to the station and watch him perform tests. Mr. Limm did not respond to Mr. Hiles's invitation and did not attend the testing. Mr. Hiles also said that he told Mr. Limm to turn the water off via a shut-off valve that was before the water meter, and he showed Mr. Limm the valve.

In response to a question from Mr. Limm, the witness said that he physically turned the water off at the meter, and this may be the reason there was less water used in the month after the meter was replaced.

John Limm

Mr. Limm testified that his lease of the premises commenced on July 14, 2011. His first water bill was approximately \$16, the second bill was \$41, and the third bill was \$367, indicating an increase in usage. He asserted that he had not yet occupied the building, and did not understand why the water-usage readings would be increasing. He testified that on November 26, 2011, someone from the company visited the site and checked all the pipes, but found no problem. At that point he determined that he wanted the water meter replaced by the company, which was done on December 6, 2011, and thereafter the bill was dramatically lower. He said that several times the company had refused to inspect the original meter in response to his complaints that the meter was giving faulty readings. He stated that he called the company, and someone told him that the meter had not been tested, which he asserts supports his claim that the meter was faulty.

On cross-examination, Mr. Limm refuted the company's assertion that the toilet was leaking and that the leaking toilet caused the high meter readings, and he insisted

that the meter was faulty. He also disputed the testimony that one of the reasons the usage decreased after the meter was replaced is that the water was turned off at the meter. He acknowledged that under the lease it was the landlord's responsibility to fix the plumbing. He asserted that even after Mr. Hiles showed him the leaking toilet he did not contact the landlord or anyone else to fix the leak. He said that he has not made any changes to the plumbing, and the replacement meter is now operating with a low reading. Mr. Limm continued to deny that there were any plumbing problems, and insisted that the high readings had to be a meter problem. He testified that he did not have the plumbing inspected prior to renting the building, and simply had the water turned on.

### FINDINGS OF FACT

Based on the documents submitted, and the testimony of the witnesses, I **FIND** the following as **FACT**.

John Limm is the owner of a business known as Sing Sing Han Brewery, LLC, located at 92 North Main Street, Building 14, Windsor, New Jersey 08561. He took over the lease on this building in July 2011. At the time he took over the lease he did not have the building's plumbing inspected. He received and paid water bills for the months up to September 2011. He then received a bill in the amount of \$367.06, representing use of 74,900 gallons of water for October 2011; a bill in the amount of \$385.55, for 78,800 gallons for November 2011; and a bill in the amount of \$148.05, for 28,700 gallons in half of December 2011. The bills for these two and a half months total \$900.66.

The records of the water company show that the water was turned on for Sing Sing Han Brewery on July 14, 2011. While turning the water on, the Aqua field representative noticed that even in the off position the meter was spinning, which meant that water was running from somewhere. He informed Mr. Limm that he should have the plumbing checked to identify the source of this problem. Several months later, Mr. Limm went into the Aqua Water Company offices to discuss his high water bills.

Even though he was told that he had a leak in the building, Mr. Limm demanded that the water meter be tested. An Aqua field representative visited the property to replace the meter on December 6, 2011, and while he was there he found a plastic bag under a toilet lid, which likely had been put there to prevent water from spraying out. The Aqua representative showed Mr. Limm the leak, which Mr. Limm acknowledged, and he explained that this leak could account for the customer's high water-meter readings. The water meter was replaced on that date.

The meter that was removed from Mr. Limm's premises was tested by Aqua on December 14, 2011. Mr. Limm was invited to observe the testing, but did not do so. The testing showed that the meter was producing accurate readings. The meter was thereafter installed at another site, and there have been no complaints about high readings. After the meter was replaced at Sing Sing Han Brewery, the water consumption went from 78,800 gallons per month to 500 gallons per month. The water was turned off at the premises on December 24, 2011, because the bill had not been paid for three months.

There is nothing in the record that evidences that the original water meter at the premises was faulty or that inaccurate readings of the meter were taken by the respondent's personnel. The meter was tested by the company, and the accuracy of the meter has been proven. The petitioner acknowledged that there had been a leaky toilet on the premises. When the water was turned on in July 2011, the company field representative observed that the meter was spinning, indicating running water somewhere, and he informed Mr. Limm of the likelihood of running water or a leak. In December 2011, Mr. Limm was informed of a specific plumbing leak at the premises. He has offered no credible evidence of any other reason for the high water-usage readings.

#### LEGAL ANALYSIS

A consumer may dispute a utility charge before the Board of Public Utilities. N.J.A.C. 14:3-7.6. When the amount of an electric, gas, water or wastewater bill is

significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate. N.J.A.C. 14:3-7.6(g). The petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962).

Based on the findings above, I **CONCLUDE** that the petitioner has not proven by a preponderance of the credible evidence that the water meter was defective or that inaccurate readings of the meter were taken by the respondent's personnel.

### ORDER

Based on the foregoing facts and conclusion, I **GRANT** respondent's motion to dismiss, and **ORDER** that the matter should be and hereby is **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.

JULY 5, 2013  
DATE

Ronald W. Reba  
RONALD W. REBA, ALJ

Date Received at Agency:

7-5-13

Date Mailed to Parties:

7/8/13

/cad

**WITNESSES**

For Petitioner:

John Limm

For Respondent:

Bill Hiles

John Hildabrant

**EXHIBITS**

For Petitioner:

- P-1 Bill from Aqua New Jersey, Inc., dated August 11, 2011
- P-2 Bill from Aqua New Jersey, Inc., dated September 13, 2011
- P-3 Bill from Aqua New Jersey, Inc., dated October 13, 2011
- P-4 Bill from Aqua New Jersey, Inc., dated November 10, 2011
- P-5 Bill from Aqua New Jersey, Inc., dated December 12, 2011
- P-6 Bill from Aqua New Jersey, Inc., dated January 18, 2012
- P-7 Bill from Aqua New Jersey, Inc., dated January 12, 2012
- P-8 Photograph of water meter

For Respondent:

- R-1 Answer to Petition
- R-2 Copy of N.J.A.C. 13:3-4.6
- R-3 History of matter
- R-4 Water Sense sheet