



Agenda Date: 6/29/16
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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Trenton, New Jersey 08625-0350
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CUSTOMER ASSISTANCE

DIANE ROEFARO,)	ORDER
Petitioner)	
)	
V.)	
)	
SUEZ WATER NEW JERSEY, INC.,¹)	DOCKET NO. WC15091000U
Respondent)	OAL DOCKET NO. PUC 18216-15

Parties of Record:

Diane Roefaro, petitioner, *pro se*
John P. Wallace, Esq., on behalf of Respondent, Suez Water New Jersey, Inc.

BY THE BOARD:

The within matter is a billing dispute between Diane Roefaro (“Petitioner”) and Suez Water New Jersey, Inc. (“Respondent” or “Suez”). This Order sets forth the background and procedural history of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on April 8, 2016.

STATEMENT OF THE CASE

On August 28, 2015, Diane Roefaro filed a petition with the Board with respect to a billing dispute with Suez. She disputed a July 2015 bill in the amount of \$3,180.53 for her property on 77th St. in North Bergen (“the property”). The bill represented charges for past water consumption which were not billed as the result of meter tampering from January 2007 to January 2015. On October 13, 2015, Suez filed an answer to the petition. Consequently, on November 9, 2015, the Board transferred the matter to the Office of Administrative Law (“OAL”) for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

The case was assigned to Administrative Law Judge (ALJ) Kimberly A. Moss. A pre-hearing conference was held on December 8, 2015. On March 16, 2016, Judge Moss presided over an evidentiary hearing in the matter. Petitioner and counsel for Suez appeared at the hearing.

¹ On January 27, 2016, United Water, Inc., advised the Board of Public Utilities that the company changed its operating name to SUEZ, the ultimate corporate parent of United Water.

At the hearing, Suez presented the testimony of Jacob Rivera, a Customer Field Representative for Suez. Mr. Rivera testified that on January 3, 2015, he removed meter 88197910 (“the old meter”) from the property and transported the meter to the shop. In addition, he installed a new meter in the house. (T.22-23).

Next, Lloyd Hill testified on behalf of Respondent. He testified that he had been employed by Suez for twenty-three years and that he presently works at Suez’s meter shop testing meters. Mr. Hill identified exhibit R-2, the meter test report for the old meter. He indicated that the intermediate-flow test registered a reading of 99, which is within the limits prescribed by the Board. However, the full-flow test registered a reading of 97.5 and the low-flow test registered a reading of 49, both of which are favorable to the customer. Mr. Hill testified that, although he does not remember the meter, upon seeing it he knew that it had been tampered with.² (T.26-28).

Suez also presented the testimony of Scott Toscano, a Suez employee who is the Manager of Revenue Management and Meter Integrity. As part of his duties, Mr. Toscano is in charge of the meter tampering and theft program. He testified that Mr. Hill referred the old meter to be inspected for possible tampering or damage and to be compared against prior meter reads. Mr. Toscano indicated that when he observed the meter it appeared that there was a hole in the meter where the register comes in contact with it, which seemed to be caused by a screw driver. (T.33). Mr. Toscano identified three pictures of the old meter which were moved into evidence as R-3A, R-3B and R-3C. (T.32). He noted that the meter register is secured by four-tabs, one of which was snapped off. (T.34:4-12). Mr. Toscano also testified with respect to a meter data-management document, exhibit R-6 in evidence. The document disclosed that from September 2008 to January 2015, the average daily usage of water was 0.60 centum cubic feet (CCF). (T.37-38).

Lastly, Gary Harstead testified on behalf of Suez. Mr. Harstead is the Director of Meter Technology in the Revenue Management Department of Suez and is a Professional Engineer. He testified with respect to the back bill document, exhibit R-7 in evidence. Mr. Harstead stated that R-7 showed the historical readings of the old meter and the new meter, which was installed in January 2015. He testified that the old meter registered an average daily consumption of 0.61 CCF during the period in which it was installed. (T.45). The newly installed meter registered an average daily consumption of 0.92 CCF from January 3, 2015 to April 7, 2015, the period of time used to calculate the back bill. (T.50:20-22). He noted that this represented a 50% increase from the average daily consumption read by the old meter. Suez used these numbers to calculate the amount Petitioner owed for the period during which the meter was tampered with from January 17, 2007 to January 3, 2015. That amount totaled \$3,121.54. In addition, Suez charged a fee of \$59.00 for the replacement of the meter.

Ms. Roefaro testified on her own behalf. She testified that the old meter was not tampered with and that she was not given a chance to inspect the old meter before it was removed from the property. She stated that there was a leak in her tenant’s toilet from November 2014 until March 2015, which she believes is the reason for the high consumption readings recorded during the back bill calculation period.

On cross-examination, Petitioner testified that seven people live in the property, including tenants. (T.18:24). She also indicated that she has a handy man named William Malaperitta,

² The meter was later entered into evidence as exhibit R-5.

who does light plumbing work at the property. She indicated that the handyman is not a licensed plumber. (T.19:2-15). Mrs. Roefaro did not present any other witnesses or testimony.

Mr. Harstead addressed the claims with respect to a leaky toilet in his cross-examination. He testified that, based on the historical meter readings, it appeared that consumption went as high as 2.00 CCF per day when there was a leak, much higher than the 0.92 which was registered on the newly installed meter. So, the disparity was likely due to meter damage. (T.48:16-24).

On April 8, 2016, ALJ Moss issued an Initial Decision. With respect to the credibility of the witnesses, ALJ Moss determined:

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** Rivera, Hill, Toscano, and Harstead to be credible. Rivera's testimony that he replaced the meter was uncontested. Hill's testimony regarding the meter test was clear and uncontested. Toscano clearly showed how the meter was tampered with. His testimony regarding the meter reading was consistent with the documents produced. Harstead's testimony showed the period of increased consumption by petitioner and the meter readings that verified the consumption. I **FIND** Roefaro's testimony to be less credible. She testified that her tenant had a toilet leak from November 2014 thru March 2015. She did not provide any witness or documentation of the leak. In addition, she stated after the leak was fixed in March 2015, her water usage was as low as her pre-November 2014 water usage. The meter damage document shows that her water usage did not decline until July 2015, after she received notice of the back bill.

[ID at 8.]

ALJ Moss determined the facts of the case based on her assessment of each witness's credibility and the documentary evidence submitted. ALJ Moss concluded that the old meter was tampered with and that Petitioner did not prove by a preponderance of the evidence that Suez improperly billed her. Accordingly, ALJ Moss dismissed the petition.

The Board received the Initial Decision of ALJ Moss on April 8, 2016. Within the statutory period, the Board requested a 45-day extension pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. The request was granted and, therefore, the time limit for the Board to render a Final Decision is extended until July 7, 2016.

Mrs. Roefaro filed exceptions on May 6, 2016. She reiterated her statement that her tenant's toilet was leaking from November 2014 to March 2015. She also challenged Mr. Harstead's testimony that her water usage increased once she was advised of the need to replace her water meter. During his testimony, Mr. Harstead stated a possible explanation for this increase was that Mrs. Roefaro repaired the meter at this time. In her exception, Mrs. Roefaro argues that if this theory were true, the meter test done in the shop would not have revealed any problems. She also argues that her water consumption began to decrease when the toilet was repaired in March 2015, not after she received her back bill in July of 2015, as Mr. Harstead

indicated. Finally, Mrs. Roefaro included copies of several water bills in her exception and a copy of the Home Depot receipt which showed the parts purchased to repair her tenant's toilet.³

Respondent replied to Mrs. Roefaro's exceptions on May 23, 2016. In response to the challenge to Mr. Harstead's testimony, Respondent argued that ALJ Moss, as the finder of fact, found Mr. Harstead to be a more credible witness than Mrs. Roefaro. Respondent also stated that the issue regarding the meter test should have been brought up during the hearing. Since Mrs. Roefaro did not even challenge the issue or cross-examine Mr. Hill, the witness who tested the meter, the issue cannot be raised again. Finally, in response to her inclusion of the water bills and receipts, Suez cites N.J.A.C. 1:1-18.4(c), which prevents evidence not presented at the hearing from being included or referred to as part of an exception.

DISCUSSION

N.J.A.C. 1:1-18.4(a) requires exceptions to be filed with the agency head and copies mailed to all other parties within thirteen days from the date the judge's initial decision was mailed to the parties. The Initial Decision was mailed to the parties on April 12, 2016, therefore, any exceptions should have been filed by April 25, 2016. Petitioner filed untimely exceptions on May 6, 2016; however, the Board will consider these exceptions and Suez's responses⁴ thereto.

N.J.A.C. 1:1-18.4(c) prohibits the inclusion of evidence not submitted in the evidentiary hearings to be submitted with exceptions. Therefore, the Board **FINDS** that the water bills and the Home Depot receipt included by Mrs. Roefaro in her exceptions are not part of the record.

With respect to Petitioner's allegations that the old meter was functioning properly, ALJ Moss properly determined that the old meter had been tampered with and that Mrs. Roefaro did not prove by a preponderance of the evidence that she was improperly billed. In customer billing disputes before the Board, petitioners bear the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is found to be preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tended hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959). Thus, Petitioner must establish her contention that the charges to her account are not proper by a preponderance of the credible evidence.

Pursuant to the Administrative Procedure Act, "The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record." N.J.S.A. 52:14B-10(c); N.J.A.C. 2:1-18.6(c). Here, ALJ Moss found Suez's witnesses to be more credible than Petitioner. The testimony by the Suez witnesses showed that the old meter had been tampered with and, as a result, Petitioner had been under-billed by approximately 50%. Mrs. Roefaro's testimony that she did not tamper with her meter and that the discrepancy in water consumption was due to a leaking toilet was determined to be less credible. Based on a review of the record, the Board **ADOPTS** Judge Moss's credibility determinations.

³ The Home Depot receipt had been included in the original petition as Exhibit 4c. However, the receipt was not presented at the evidentiary hearing. N.J.A.C. 1:1-18.4(a).

⁴ Counsel for Suez noted that it did not receive Petitioner's exception until May 23, 2016 because they were originally sent to the wrong address. Thus, Suez's reply, filed on May 23, 2016, complies with the 5-day time limit proscribed by N.J.A.C. 1:1-18.4(d).

N.J.A.C. 14:3-4.6(e) provides that “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.” Petitioner argued that the increased water usage after the installation of the new meter was due to a leak in her tenant’s toilet from November 2014 to March 2015 and not due to tampering. Additionally, Petitioner contended that she was not given a chance to inspect the old meter before it was removed and that the old meter was not tampered with or broken. Nevertheless, ALJ Moss determined that testimony to be less than credible because Mrs. Roefaro did not present any evidence or witness testimony at the hearing to support her argument that her tenant’s toilet had been leaking. Moreover, the evidence in the record indicates that the old meter was tampered with and was not functioning within the allowable margin of error.

Consequently, the Board **FINDS** that ALJ Moss properly determined that Petitioner has not established by a preponderance of the evidence, that she was improperly billed by Suez.

Upon careful review and consideration of the record and ALJ Moss’s credibility determinations, the Board **HEREBY FINDS** the findings of facts and conclusions of law of the ALJ to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear her burden of proof to show that the bill from Suez for past water consumption was inaccurate or improper.

Therefore, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and the petition in this matter is **HEREBY DISMISSED**.

This order shall be effective on July 9, 2016.

DATED:

BOARD OF PUBLIC UTILITIES
BY:

RICHARD S. MROZ
PRESIDENT

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:

IRENE KIM ASBURY
SECRETARY

**IN THE MATTER OF DIANE ROEFARO, PETITIONER V. SUEZ WATER NEW JERSEY, INC.,
RESPONDENT – DOCKET NOS. BPU WC15091000U AND OAL PUC 18216-15**

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